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ordinance prepared
to comply with the
Montana Municipal
Zoning Enabling
ADVISORY

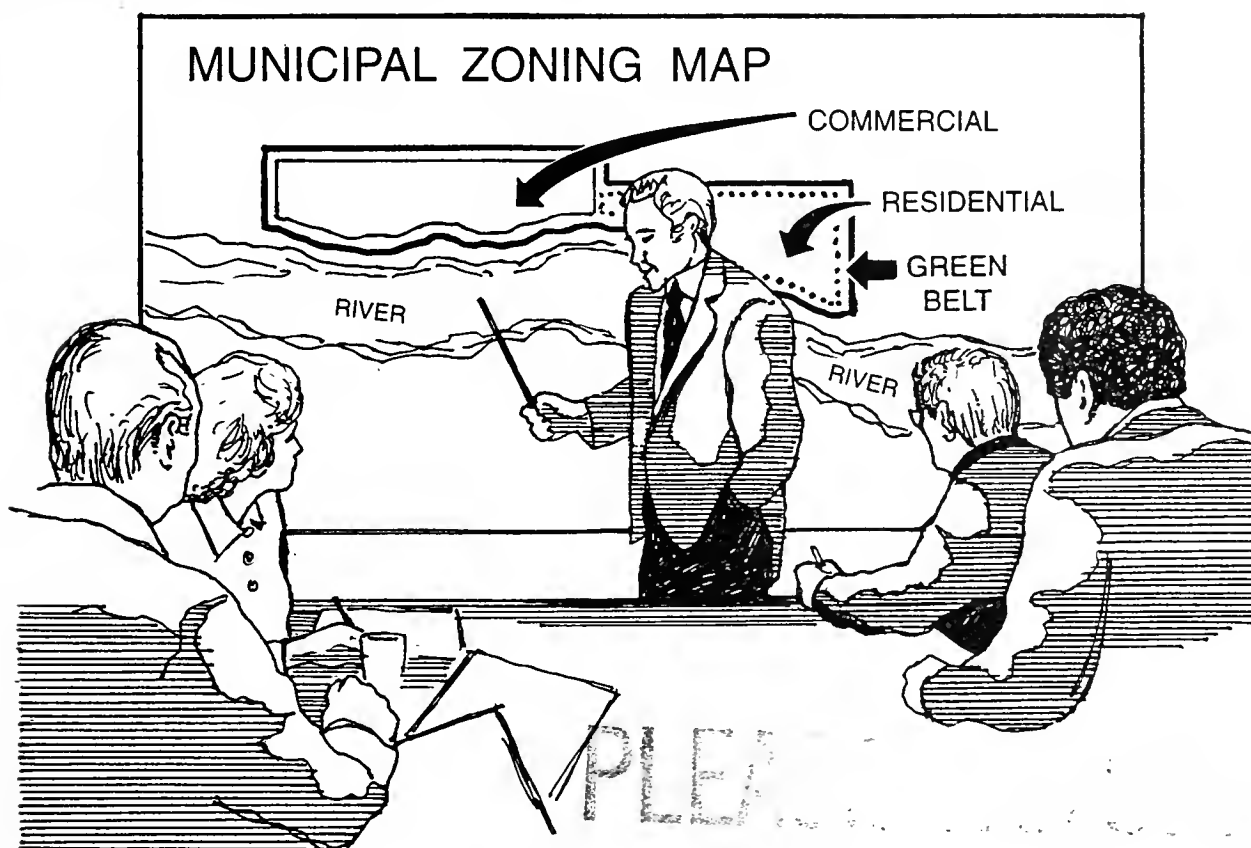
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A MODEL MUNICIPAL ZONING ORDINANCE

Prepared to Comply with the Municipal Zoning Enabling Act



December, 1994

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Local Government Assistance Division
Community Technical Assistance Program

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ADVISORY

A MODEL MUNICIPAL ZONING Ordinance

**Prepared to Comply with the
Montana Municipal Zoning Enabling Act**

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December, 1994

THIS ADVISORY TECHNICAL ASSISTANCE PUBLICATION HAS BEEN DEVELOPED BY THE MONTANA DEPARTMENT OF COMMERCE WITH PARTIAL FUNDING FROM THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD) UNDER THE HUD 107 GRANT PROGRAM (HUD GRANT AGREEMENT NO. B-90-SK-MT-0001)

This publication does not necessarily reflect the views or policies of HUD.

Upon request, this publication will be made available in a alternative-accessible format.

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INTRODUCTION TO A MODEL MUNICIPAL ZONING ORDINANCE

A Model Municipal Zoning Ordinance is intended to serve as an example and reference for municipalities to use in preparing or revising their own zoning ordinances. We encourage local governments to adapt the Model to match local concerns and needs. The Model is an advisory publication. It is part of an on-going program of technical assistance provided by the Department of Commerce (DOC) Community Technical Assistance Program (CTAP) to local government officials, planning boards, planning staff, development interests and citizens.

This publication is a model ordinance for traditional zoning. Traditional zoning is the legal method by which local governments can divide their jurisdictions into use districts (zones), restrict the uses of land within the various zones, and impose requirements that the permitted uses must meet. Zoning regulations prevent problems by separating incompatible uses, and foster a good quality and character of development by requiring land uses to meet standards that protect both public and private property owners. Because traditional zoning regulates the location of uses, the zoning map, showing the precise boundaries of each use zone, is one essential part of the zoning regulations. Traditional zoning is appropriately used in urban environments, with high density development, and where segregation of uses is desirable.

A municipality has tremendous flexibility to craft any type of zoning regulations that will fit the community. Except for a Montana Supreme Court ruling that requires an appellate body (usually a board of adjustment) and several statutory procedural requirements, Montana law imposes few constraints on the content, substance and structure of municipal zoning ordinances. Federal courts have established a number of Constitutional and legal constraints on regulation of private land, but otherwise a municipal government has great latitude to develop a useful and effective zoning ordinance that suits their community.

This Model incorporates a board of adjustment to act as the appellate body, a zoning commission to approve conditional uses permits, and a zoning administrator to approve permitted uses. Local officials can incorporate any number of alternative review procedures into a sound and effective zoning ordinance. However, it is the development regulations for each district that should be tailored to the individual community, and local officials should be particularly willing to deviate from the suggested requirements of the Model and to adopt development standards that will work and be accepted in their particular municipality.

The Montana Supreme Court, in *Little v. Board of County Commissioners of Flathead County*, 38 St. Rpt. 1124, 631 P.2d 1282 (Mont. 1981), emphatically reaffirmed the principle that zoning regulations must substantially conform to the adopted comprehensive plan. **Prior to drafting and adopting zoning regulations or amendments, local officials must have prepared and adopted, through a public planning process, a**

comprehensive plan that expresses the objectives and direction that will be implemented through the zoning regulations.

Prior to proposing zoning regulations, local officials need to thoroughly discuss with citizens the development issues in their community and how the regulations are designed to address those issues. Broad public involvement and support is vital for the adoption of zoning regulations. Public notice and hearings are required by law.

In many areas in Montana, suitable and affordable housing is in short supply. The CTAP developed A Model Municipal Zoning Ordinance with consideration for reducing barriers to affordable housing, while safeguarding public health and safety in the development of housing. The suggested requirements in this Model are generally the minimum needed to protect the public interest. The conditional use permit and planned unit development provisions encourage the construction of lower-cost housing through the use of relaxed standards under careful planning and public review that ensures healthy and safe living conditions. In addition, the standards for manufactured homes have been drafted to provide affordable housing while protecting valid public safety and aesthetic concerns.

Local officials should not simply copy the provisions suggested in this Model into a local zoning Ordinance. **The zoning commission, governing body, planner or consultant, and interested citizens should analyze every provision in a proposed Ordinance to assess its purpose, whether it is needed, clearly written, and in the best wording to accomplish its purpose.** Each provision of this Model should be carefully scrutinized by local officials. Unneeded provisions should be omitted, inappropriate or improper provisions modified to suit the specific community, and other useful and appropriate provisions added.

In addition to this Model, the CTAP has recently published a series of publications to assist local governing officials and staff and private citizens. These publications include:

- Montana's Annexation and Planning Statutes
- A Primer On Land Use Planning and Regulation for Local Governments
- A Handbook On Local Land Use Regulation
- Model County Development Permit Regulations

If you have any questions about A Model Municipal Zoning Ordinance or other Department publications, please contact the Department of Commerce, Community Technical Assistance Program, 1424 Ninth Avenue, Helena, Montana 59620, phone (406) 444-3757.

A MODEL MUNICIPAL ZONING ORDINANCE

ORDINANCE NO. ____

ORDINANCE FOR PROMOTING THE HEALTH, SAFETY, MORALS, OR THE GENERAL WELFARE OF _____, MONTANA, AND TO REGULATE AND RESTRICT THE HEIGHT, NUMBER OF STORIES AND SIZE OF BUILDINGS AND OTHER STRUCTURES; THE PERCENTAGE OF LOT THAT MAY BE OCCUPIED; THE SIZE OF YARDS, COURTS AND OTHER OPEN SPACES; THE DENSITY OF POPULATION; THE LOCATION AND USE OF BUILDINGS, STRUCTURES AND LAND FOR TRADE, INDUSTRY, RESIDENCE OR OTHER PURPOSES; AND PROVIDING FOR METHOD OF ALTERING ZONING REGULATIONS.

WHEREAS, Title 76, Chapter 2, Part 3, MCA, empowers the City to enact a zoning ordinance and to provide for its administration, enforcement, and amendment, and

WHEREAS, the city council deems it necessary for the purpose of promoting the health, safety or general welfare of the city to enact such an ordinance, and

WHEREAS, the city council, pursuant to the provisions of Section 76-2-307, MCA, has appointed a Zoning Commission to recommend the boundaries of the zoning districts and appropriate regulations to be enforced therein, and

WHEREAS, the Zoning Commission has recommended dividing the City [and ____ mile extraterritorial zoning jurisdiction] into districts and has prepared regulations pertaining to such districts, and

WHEREAS, the city council, pursuant to the provisions of Title 76, Chapter 1, Part 6, MCA, has adopted a comprehensive plan for the jurisdictional area and the regulations have been prepared in accordance with the plan, and

WHEREAS, all requirements of Title 76, Chapter 2, Part 3, MCA, with regard to the preparation of a zoning ordinance and subsequent action of the city council have been met;

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF _____, MONTANA, AS FOLLOWS:

The Model is written as a municipal Ordinance, which is the proper means by which a municipality should adopt zoning regulations. The Model's preamble is fairly lengthy. While a preamble is not an essential part of the Ordinance, it serves several useful purposes. It helps citizens understand the objectives of the zoning regulations, affirms that the municipality has complied with procedural and substantive requirements, and serves to remind local officials that those requirements must be followed. Thus, the preamble serves as an educational and instructive vehicle that informs citizens, local officials and the courts.

ARTICLE I. ADMINISTRATION AND ENFORCEMENT

SECTION 1. TITLE

This Ordinance shall be known and cited as the "ZONING Ordinance OF THE CITY OF _____, MONTANA."

The term "city council" is used in this Model, but "town council" or "city commission" should be substituted as appropriate for the specific municipality.

Brackets, - "[...]" - are used to show additional language that could be included where appropriate.

SECTION 2. AUTHORITY

This zoning Ordinance is adopted under the authority of the Municipal Zoning Enabling Act (76-2-301 through 76-2-328, MCA).

SECTION 3. PURPOSE AND INTENT OF ZONING Ordinance

A. The purpose of this zoning Ordinance is to promulgate and adopt such regulations that:

1. Are designed in accordance with the comprehensive plan.
2. Are designed to lessen congestion in the streets.
3. Will secure safety from fire, panic and other dangers.
4. Will promote health and the general welfare.

5. Will provide adequate light and air.
6. Will prevent the overcrowding of land.
7. Will avoid undue concentration of population.
8. Will facilitate the adequate provision of transportation, water, sewerage, schools, parks and such other public requirements.
9. Give reasonable consideration to the character of the district.
10. Give reasonable consideration to the district's peculiar suitability for particular uses.
11. Give reasonable consideration to conserving the value of buildings.
12. Will encourage the most appropriate use of land throughout the jurisdictional area.

B. Further, the intent of this zoning Ordinance is to:

1. Insure that the land uses of a community are properly situated in relation to one another, providing adequate space for each type of development, and preventing problems associated with incompatible uses.
2. Control the density of development in each area of the community so that property can be adequately serviced by such public facilities as streets, schools, recreation and utility systems.
3. Direct new growth into appropriate areas.
4. Protect existing property by requiring that development afford adequate light, air and privacy for persons living and working within the municipality.
5. Improve the quality of the physical environment of the community.
6. Protect and maintain property values.
7. Preserve and develop the economic base of the community.
8. Encourage the provision of affordable housing for families of all income levels.

The Montana Supreme Court ruled in *Lowe v. City of Missoula* (165 Mont. 38, 525 P.2d 551, 1974) that when cities and towns propose zoning or rezoning, they must consider the 12 points set forth in 76-2-304, MCA - the purpose section of the Municipal Zoning Enabling Act - and that a zoning regulation or rezoning is invalid unless it is enacted in accordance with the 12 criteria.

To meet the 12-point "Lowe" test, a municipality should, at a minimum, list the 12 points in the purpose section of their local land use regulations. To give greater legal support to the regulations, local officials should try to ensure that the 12 points are addressed in the staff report to the board, and the minutes of planning board or governing body meetings should show that the 12 points were considered and how the proposed regulations conform to the 12 points.

A municipality may wish to include other statements of purpose in its zoning regulations.

SECTION 4. JURISDICTIONAL AREA

The zoning jurisdiction of the City of _____ shall include the land within the corporate limits of the City [and within the ____ mile extraterritorial zoning jurisdiction boundaries established and shown on the "Official Zoning Map, _____, Montana].

SECTION 5. PERMIT REQUIRED

A. Zoning Permit

A Zoning Permit must be obtained from the Zoning Administrator before any building, structure or land may be used or occupied, or before any building or structure permitted under this Ordinance may be erected, placed, moved, expanded or structurally altered. A Zoning Permit may be issued only when the proposed building, structure, parcel or use will meet the requirements of this Zoning Ordinance.

B. Conditional Use Permit

A Conditional Use Permit must be obtained before those uses specified as Conditional Uses within certain zoning districts may be established. A Conditional Use Permit may be issued only when the proposed use will meet both the requirements of the particular district involved and the conditions specified for the use.

C. Zoning Requirements Operate in Addition to Other Municipal Codes

The requirements of this Zoning Ordinance operate in addition to those requirements established under other city Municipal Codes, except that where conflicts with other city Municipal Codes may occur these Zoning requirements shall govern.

It is useful to state at the beginning of the zoning Ordinance the requirement for a zoning permit. All other provisions of the Ordinance follow from that requirement.

SECTION 6. INCORPORATION OF OFFICIAL ZONING MAP

A. Official Zoning Map a Part of Zoning Ordinance

The "Official Zoning Map of _____, Montana," and all notations, references and other information shown on the map are hereby incorporated by reference and made a part of this Ordinance.

B. Maintaining and Changing the Official Zoning Map

1. The Official Zoning Map shall be kept in City Hall, and shall be the final authority as to the current status of zoning districts in the ____ (city) _____ zoning jurisdictional area.
2. The Official Zoning Map shall bear the signature of the Mayor, attested by the City Clerk, and the date of adoption of this Ordinance.
3. The Official Zoning Map shall bear the seal of the City under the following words, "This is to certify that this is the Official Zoning Map of _____, Montana, referred to in Section ____ of Ordinance Number ____ of the City of _____, Montana."
4. Whenever any changes are made to district boundaries in accordance with the procedures of this Ordinance, those changes approved by the City Council shall be promptly entered on the Official Zoning Map, and a signed and dated certification attached to the Map. No amendment to district boundaries shall become effective until those changes are presented to the City Council by the Zoning Administrator. If the City Council approves the changes, the changes shall be entered on the Official Zoning Map.
5. No changes of any nature shall be made to the Official Zoning Map except in conformity with the procedures specified in this Ordinance.
6. A copy of the Official Zoning Map, duly certified by the Zoning Administrator, shall be filed in the office of the City Clerk. Each change to the Official Zoning Map adopted by the City Council, duly certified by the Zoning Administrator, shall likewise be filed in the office of the City Clerk. Any changes adopted by the City Council to the Official Zoning Map must be approved by resolution of the City Council in accordance with the amendment procedures specified in Section 13.

C. Loss, Damage, or Destruction of Official Zoning Map

In the event that the Official Zoning Map becomes damaged, destroyed, lost or difficult to interpret, the City Council may by resolution adopt a new Official Zoning Map which shall supersede the prior Official Zoning Map. The new Official Zoning Map may correct drafting or other errors or omissions in the prior Map, but no such corrections shall have the effect of amending the original Official Zoning Map or any subsequent amendment thereof. The new map shall be certified in the same manner as the original Official Zoning Map, noting that it supersedes the prior Map.

The Official Zoning Map is an essential part of a zoning Ordinance. Local officials must pay careful attention to its preparation and maintenance. The map should be drafted on an accurate city base map of reasonably large scale. The district boundaries must be accurately and clearly drawn. Changes to boundaries must be made through the proper zoning amendment procedures. The changes must be promptly made on the map and duly noted and certified. The public and zoning officials can, therefore, rely on the map as a current and correct depiction of the official district boundaries.

SECTION 7. DEFINITIONS

A. Interpretation of Certain Words

For purposes of this Ordinance the following conditions and interpretations apply:

1. Words used in the present tense include the future tense.
2. Words used in the singular tense include the plural; words used in the plural include the singular, unless the natural construction of the wording indicates otherwise.
3. The word "person" includes a firm, association, corporation, trust, organization, partnership or company, as well as an individual.
4. The word "lot" includes the words "parcel" or "tract."
5. The word "shall" is mandatory; the word "may" is permissive.

B. The following terms used in this Ordinance mean:

ACCESSORY STRUCTURE OR USE: The use or structure on the same lot with, and customarily secondary or subordinate to, the principal use or structure.

AUTOMOBILE WRECKING: The dismantling or wrecking of used motor vehicles or trailers, or the storage, sale, or dumping or dismantling, of partially dismantled, obsolete or wrecked vehicles or their parts.

BOARDING HOUSE: A building, or portion thereof, where lodging for five or more persons is provided for compensation whether or not meals are provided.

BUILDING: Any structure erected for support, shelter or enclosure of persons, animals, or property of any kind.

BUILDING HEIGHT: The vertical distance from the highest point of a structure to the finished grade of the ground.

CARETAKER'S RESIDENCE: A single family dwelling located in conjunction with a residential, commercial or industrial land use that requires 24 hour care in order to protect or operate the use.

CHURCH: A building designed and used for public worship by a religious body.

COMMUNITY RESIDENTIAL FACILITY (76-2-411, MCA):

- (1) a community group home for developmentally, mentally, or severely disabled persons which does not provide skilled or intermediate nursing care;
- (2) a youth foster home or youth group home as defined in 41-3-1102, MCA);
- (3) a halfway house operated in accordance with regulations of the department of health and environmental sciences for the rehabilitation of alcoholics or drug dependent persons; or
- (4) a licensed adult foster family care home.

CONDITIONAL USE: A use that is allowed in a specific district if the use meets certain requirements in order to maintain and assure the health and safety of the community and to maintain the character of the district.

DISTRICT, ZONING: A geographical area designated in the zoning ordinance and delineated on the zoning map for which requirements for the use of land and structures and development standards are prescribed.

DRIVE-UP EATING ESTABLISHMENT: A building or structure from which persons are served food or beverages in their vehicles or at curbside, including establishments that serve customers outside of their vehicles.

DWELLING: A building or portion thereof used for occupancy by one or more families.

DWELLING, MULTIPLE FAMILY: A building or portion thereof designed for residential occupancy by two or more families living separately.

DWELLING, SINGLE FAMILY: A building designed for residential occupancy by one family.

DWELLING, TWO FAMILY: A building designed for residential occupancy by two families living separately.

DWELLING UNIT: A building or portion thereof providing separate cooking, eating, sleeping and living facilities for one family.

FAMILY: One or more persons living together as a single housekeeping unit and occupying a dwelling unit, provided that unless all members are related by blood or marriage the family shall not exceed five persons. Domestic resident employees serving on the premises are exempt from the five-person limit.

GRADE: The point of elevation of the finished surface of ground at the exterior wall of the building.

HOME OCCUPATION: The use of a portion of a dwelling unit or accessory building for occupations at home by one or more persons residing in the dwelling unit. The activity must be clearly incidental and subordinate to the use of the building as a dwelling.

HOTEL/MOTEL: A building, or buildings, containing six or more rooms designed and rented for sleeping purposes for transients, and where only a general kitchen and dining room may be provided within the building or in an accessory building.

LIVESTOCK: Horses, cattle, sheep, goats, swine, donkeys and mules.

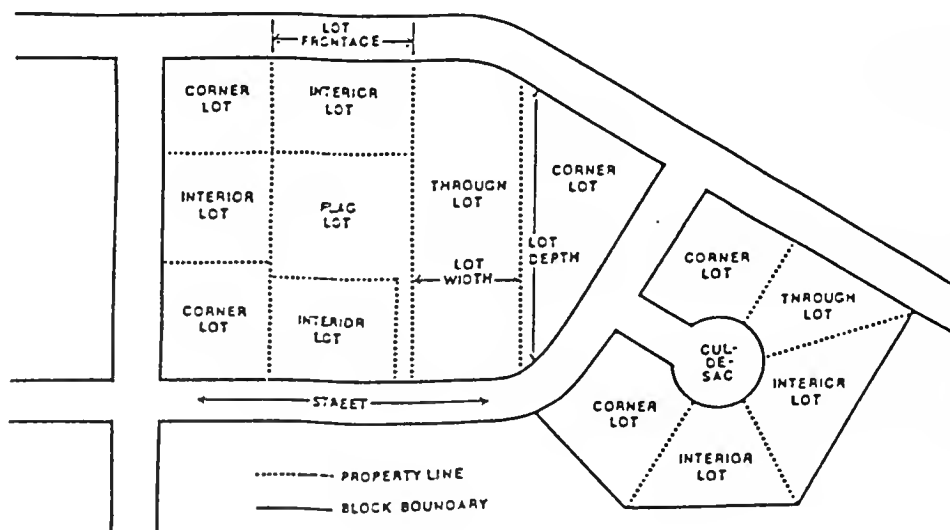
LOADING SPACE, OFF STREET: An off-street space conveniently located at a building to allow service pickups and deliveries by commercial vehicles.

LOT: A parcel or tract of land shown as an individual unit of ownership on a certificate of survey, subdivision plat, deed or other instrument of record.

LOT, CORNER: A lot located at the intersection of two or more streets.

LOT DEPTH: The mean distance between the front and rear lot lines.

LOT FRONTAGE: The portion of a lot nearest the street. For corner lots the front of a lot shall be the narrowest part of the lot having street frontage.



LOT, INTERIOR: A lot with only one frontage on a street.

LOT, LINES: The lines bounding a lot as defined herein.

LOT WIDTH: The mean width of the lot measured at right angles to its depth, as measured at the building set back line.

MANUFACTURED HOME: A detached residential dwelling unit fabricated at a factory, not in accordance with the standards of the Uniform Building Code, and designed for transportation on its own chassis to a building site for occupation as a dwelling with or without a permanent foundation.

"Manufactured home" is an official designation by the U.S. Department of Housing and Urban Development (HUD) for units built after July 1, 1976, and therefore in compliance with the Federal Manufactured Home Construction and Safety Standards (HUD Code). Manufactured homes are not built to comply with the Uniform Building Codes, and therefore are distinct from site-built and modular homes. "Manufactured home" is the official HUD term used to describe housing units people have historically called "mobile homes." Manufactured housing has evolved significantly over the past 10 years, and the HUD Code ensures improved quality of construction, durability, and appearance.

Most people confuse the term "manufactured homes" with "modular homes," which also are fabricated in a factory, but are constructed to meet the Uniform Building Code, plumbing, mechanical and electrical construction codes that apply to site-built houses.

This Model uses the term "manufactured home," rather than "mobile home" to be consistent with the official HUD term and to foster greater acceptance of this housing type which offers one important form of affordable housing.

It will be vital that local officials who incorporate "manufacturing homes" into their zoning Ordinance clearly explain to the public that this housing type is not modular housing and does not conform to the Uniform Building Codes.

Some communities may want to use the term "mobile home" rather than "manufactured home," in their zoning Ordinance to minimize the confusion for the general public. If the term "mobile home" is used in the Ordinance, it will be important to emphasize that the term includes "manufactured home, a unit built after July 1, 1976, and conforming to the 1976 HUD Code."

MANUFACTURED HOME, CLASS A: A manufactured home fabricated after July 1, 1976, in compliance with the standards specified in 42 United States Code Sec 5401 (HUD Code), and that satisfies each of the following additional criteria:

- a. The length does not exceed 4 times its width.
- b. The pitch of the roof has a minimum vertical rise of 3 feet per 12 feet of horizontal run, and the roof is finished with a type of shingle commonly used in standard residential construction.
- c. The exterior siding consists of wood, hardboard, vinyl or aluminum siding, or other materials comparable in composition, appearance and durability to the exterior materials used in standard residential construction.
- d. The dwelling unit is secured to a permanent, continuous masonry foundation.
- e. The tongue, axles, transporting lights, and removable towing apparatus are removed after placement on the lot and before occupancy.

MANUFACTURED HOME, CLASS B: A manufactured home fabricated after July 1, 1976, in compliance with the standards specified in 42 United States Code Sec 5401 (HUD Code), but does not meet the additional criteria necessary to qualify as a Class A manufactured home.

MANUFACTURED HOME, CLASS C: A manufactured home constructed prior to July 1, 1976, and not meeting the HUD Code.

MANUFACTURED HOME PARK: A tract of land providing two or more spaces for lease or rent to the general public for siting manufactured homes.

MODULAR HOME: A dwelling constructed at a factory in accordance with the Uniform Building Code applicable to site-built homes, and transported to the site for final assembly on a permanent foundation.

NURSING HOME: A building used to house and care for ambulatory, aged, or infirm persons under the care and supervision of a professional staff.

OFFICE, PROFESSIONAL, BUSINESS, ADMINISTRATIVE AND GOVERNMENT: Offices occupied by accountants, architects, dentists, doctors, engineers, attorneys, insurance agents, real estate agents, public employees and other professions.

PARKING SPACE, OFF STREET: A space located off any public right-of-way that is available for parking a motor vehicle.

PLANNED UNIT DEVELOPMENT: A land development project designed and planned as a single entity under a plan that offers a variety of land uses, housing types and densities, and design features in addition to those allowed by right or condition in the zoning district.

RESTAURANT: A public eating facility that does not provide curb side or drive-up automobile service.

RECREATIONAL VEHICLE PARK: A premise used for public camping where persons can rent space to park individual camping trailers, pick-up campers, motor homes, and travel trailers.

RETAIL SALES: An establishment selling goods, wares, or merchandise directly to a consumer.

SETBACK: The horizontal distance required between any structure and a lot line, measured at right angles to the lot line.

SHOPPING CENTER: One or more buildings containing at least three separate retail businesses that are planned, developed and managed as a unit, with off-street parking provided on the property.

SIGN: Any lettered or pictorial device or structure designed to inform or attract attention.

STRUCTURAL ALTERATION: The modification of a building that changes its exterior dimensions or its roof line(s).

STRUCTURE: That which is constructed or erected at a fixed location on the ground, or attached to something having a fixed location on the ground. Structures include buildings, manufactured homes, walls, fences, and billboards or signs.

USE: Any purpose for which a building or other structure or a tract of land may be designed, arranged, intended, maintained, or occupied in any legal activity, occupation, business, or operation carried on or intended to be carried on in a building or other structure or on a tract of land.

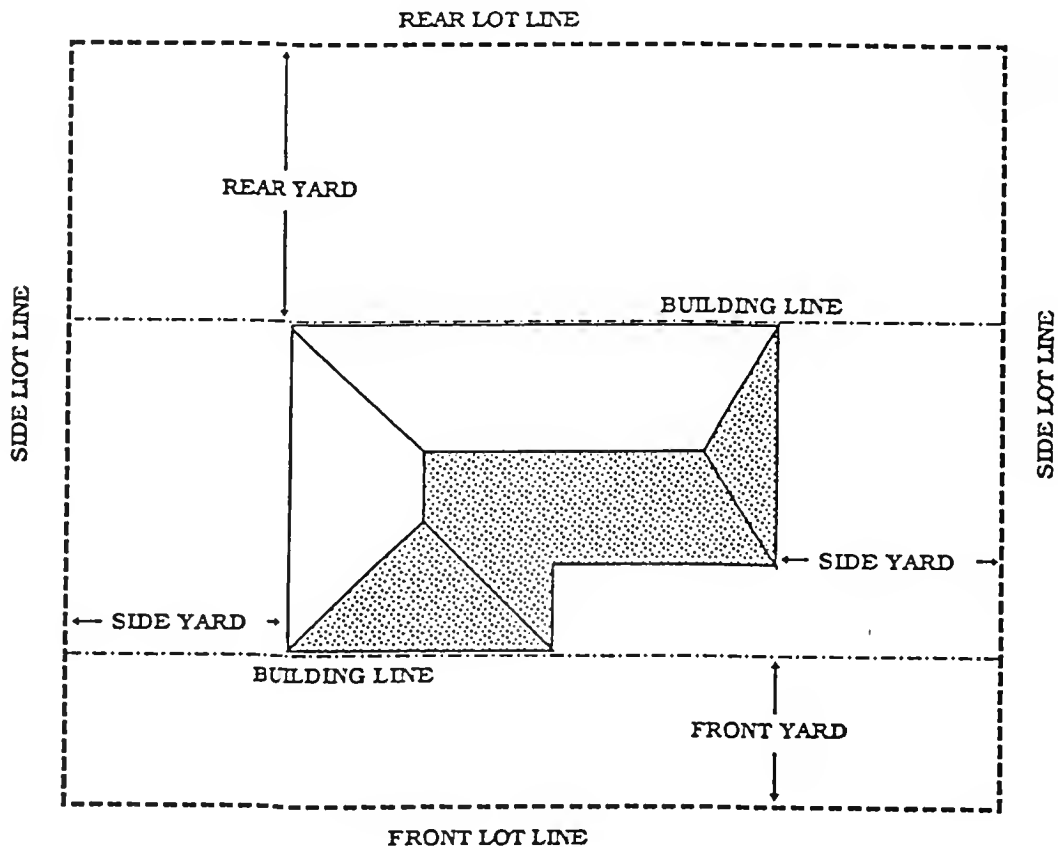
VARIANCE: The approved relaxation of the strict application of the terms of these regulations, where owing to special conditions a literal enforcement of the provisions of these regulations will result in an unnecessary hardship, where it will not be contrary to the public interest, and where the spirit of the Ordinance will be observed and substantial justice done.

WHOLESALE: The sale of goods and merchandise for resale rather than for direct consumption.

YARD, FRONT: A required open space unoccupied by any structure or portion of a structure and extending across the full width of the lot between the front building line and the front lot line.

YARD, REAR: A required open space unoccupied by any structure or portion of a structure and extending across the full width of the lot between the rear building line of the principal building and the rear lot line.

YARD, SIDE: A required open space unoccupied by any structure or portion of a structure and extending from the side building line to a side lot line running from the front to the rear of the lot.



The location of the definitions section within the Ordinance is not a significant issue. This Model places the definitions toward the beginning on the theory that a reader can read and better understand the terms before proceeding through the Ordinance's provisions. **However, the definition section should be drafted last, to ensure that only terms used in the Ordinance, and all appropriate terms, are defined.**

SECTION 8. ZONING ADMINISTRATOR; DUTIES

A. Designation of Zoning Administrator

The City Council shall designate a Zoning Administrator to administer and enforce this Ordinance. The City Council may direct city personnel or departments to provide assistance as appropriate.

B. Duties of the Zoning Administrator

1. The Zoning Administrator shall receive applications for zoning permits, conditional use permits and variance requests; review applications and plans; issue zoning permits; and coordinate inspection of premises and properties.
2. Where the Zoning Administrator finds that any of the provisions of this Ordinance are being violated, he shall notify in writing the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. He shall order discontinuance of illegal buildings or structures or of illegal additions, alterations, or structural changes; or shall take any other action authorized by this Ordinance to ensure compliance with or to prevent violation of its provisions.
3. The Zoning Administrator shall:
 - a. Serve as an advisor to the Zoning Commission, Board of Adjustment and City Council on matters relating to administration and enforcement of this Zoning Ordinance.
 - b. Prepare staff reports as required under this Ordinance.
 - c. Prepare and maintain records of all proceedings required or authorized under this Ordinance.

SECTION 9. ZONING COMMISSION; RESPONSIBILITIES

The City Council shall establish a Zoning Commission and appoint members to the Commission. The Zoning Commission shall have the following duties:

1. Review proposals and make recommendations to the City Council regarding proposals for the amendment of this Ordinance and the Official Zoning Map.
2. Review and approve applications for conditional use permits under the procedures set forth in Section 11, Conditional Use Permits.

Municipal officials may want to foster continuity between the planning and regulation phases by appointing some or all of the members of the planning board to the zoning commission. **It is important to understand that when planning board members act as a permitting body, they do so by authority delegated to the zoning commission under the zoning Ordinance and not as a planning board, which is advisory only under Montana's Local Planning Enabling Act.**

SECTION 10. PROCEDURES FOR APPLICATION, REVIEWING AND GRANTING PERMITS

A. Procedures for Applying for a Zoning Permit

1. A Zoning Permit must be obtained from the Zoning Administrator before any building, other structure, or land may be used or occupied, or before any building or other structure permitted under this Ordinance may be erected, placed, moved, expanded, or structurally altered. The Zoning Administrator may issue a Zoning Permit only when the proposed building, structure, parcel or use will meet the requirements of this zoning Ordinance.
2. Before conducting a use, or constructing, erecting, expanding, altering or modifying a building or structure, a person must submit a completed zoning application form to the Zoning Administrator, with all of the required information, including plans drawn to scale, showing the actual dimensions and shape of the lot, the exact sizes and location of existing and proposed buildings and other structures. The application shall include such other information as may be required by the Zoning Administrator, including uses of buildings and land; the number of families, dwelling units, or rental units proposed; conditions existing on the lot; and such other matters as may be necessary to determine conformance with this Ordinance.

B. Reviewing and Issuing a Zoning Permit

1. The Zoning Administrator shall review the application to ensure the required information is submitted and is complete. When the application and submitted information are complete, the Zoning Administrator shall determine whether the proposed building, structure, alteration, or use is permitted at the proposed location, and whether the proposal will comply with the requirements of the applicable district and these regulations.
2. Should the Zoning Administrator find that the proposal is permitted in the applicable district and will conform to all requirements, he shall issue the applicant a Zoning Permit.

3. Should the Zoning Administrator find that the proposal either is not permitted in the applicable district or will not conform to all requirements of this Ordinance, he shall deny the application and state in writing that the application is denied, and explain the reasons for denial. The statement accompanied by one copy of the application shall be sent to the applicant.
4. Construction, installation, alteration, placement or use must comply with the plans approved by the Zoning Administrator.
5. A Zoning Permit shall be in effect for one year from the date of approval.

While this Model does not require the Zoning Administrator to conduct site inspections of the property in question, on-site examinations are important for effective administration of zoning regulations. The Zoning Administrator should inspect the property after receiving an application for a zoning permit, conditional use permit, or appeal to the Board of Adjustment. Only after inspecting the property can sound decisions, explanations or recommendations be made. After a permit has been issued by the appropriate body and the property is being developed, the Zoning Administrator should again inspect the site to determine whether the development is occurring in compliance with the permit.

SECTION 11. CONDITIONAL USE PERMITS

A. Purpose

The purpose of conditional use permits is to provide for specific uses, other than those specifically permitted in each district, which may be appropriate in the district under certain safeguards or conditions. The conditional use permitting process is intended to provide a detailed and comprehensive review of proposed developments that potentially could have significant adverse impacts on the community.

B. Conditional Uses: Requirements

1. No structure or land may be used for any purpose in any district where the use is not permitted, unless the use is listed as a conditional use within that district and the approval for the use is obtained through these procedures.
2. Conditional uses and the required conditions are listed as part of the requirements for each district.
3. Conditional uses also must comply with any additional conditions prescribed by the Zoning Commission relating to the following:

This Model incorporates conditional use permits issued by the Zoning Commission as a means to provide a more detailed and comprehensive review of larger, complex or controversial land use proposals. Most Montana municipalities use a conditional use permitting process to handle land uses that are not permitted in a district as a matter of right. Montana law [76-2-323(1)(b), MCA] authorizes a zoning Ordinance to direct the board of adjustment to make special exceptions. Special exceptions can be incorporated into a zoning Ordinance either as a substitute for a conditional use permit process or as a review process that operates in addition to conditional use permitting.

If a special exception is incorporated as a substitute for conditional use permitting, the conditions and criteria for approval could be the same as or similar to those used for issuing conditional use permits. The board of adjustment (or the governing body) must meet to decide on a special exception in a public meeting. Under Montana's open meeting law, notice of the meeting must be published and the public allowed to comment. Typically, the board of adjustment schedules a public hearing as part of its meeting. Four members of the board must vote in favor of issuing a special exception. To grant a special exception the board need not find that an undue hardship would occur (as it must to issue a variance). The board simply must find that the proposal will comply with the conditions and criteria specified in the Ordinance.

If a governing body elects to incorporate both a conditional use process and a special exception process, it must decide what uses will be reviewed as special exceptions and what uses will be reviewed as conditional uses. Also, for both processes the local officials must decide what conditions and criteria the land uses must meet.

In larger cities where many different types of uses may occur and where intensive levels of development can occur, it may be appropriate to incorporate both special exception and conditional use review processes in addition to review of permitted uses. The Zoning Administrator might review and issue conditional use permits under a set of fairly definitive conditions, while the board of adjustment reviews large or controversial proposals as special exceptions. As another approach, an Ordinance might delegate moderately complex uses for approval by the board of adjustment as special exceptions, and direct the governing body to review major land uses as conditional uses. In smaller municipalities a three-tier review system usually is unnecessary because the community and land use patterns are relatively simple. In addition, a complex review system may require burdensome administrative procedures that could hinder effective enforcement.

- Adequate ingress and egress to property and proposed structures with particular concern for automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or other emergency.
- Adequate off-street parking and loading areas, where required, with particular attention to access, traffic flow and vehicular and pedestrian safety.
- Location of garbage containers and garbage pickup with respect to traffic flow and access, odor, and vehicular and pedestrian safety.
- Availability and compatibility of utilities in suitable locations.
- Adequate screening and buffering, with attention to type, dimensions and character.
- Signs, with attention to preventing glare and promoting traffic safety and harmony with adjacent properties.
- Required yards and open space.
- General compatibility with adjacent and other properties.

C. Procedures for a Conditional Use Permit

The following procedures must be followed before the Zoning Commission may grant a Conditional Use Permit:

1. The applicant must submit an accurate and complete written application for a conditional use to the Zoning Commission through the Zoning Administrator. All applications for conditional use permits must be accompanied by plans drawn to approximate scale, showing the approximate dimensions and shape of the lot to be built upon; the approximate sizes and locations on the lot of buildings already existing, if any; the location and dimensions of the proposed buildings or alterations; and information which clearly states how the conditions for the use will be met.
2. The application must include any other information as may be required by the Zoning Administrator, including descriptions of proposed buildings and alterations; existing or proposed uses of land and buildings; the number of families, dwelling units, or rental units the building is designed to accommodate; conditions existing on the lot; and such other matters as may be necessary to determine conformance with, and provide for the enforcement of this Ordinance.

3. Notice shall be published at least 7 days in advance of a public hearing before the Zoning Commission. The owner of the property for which a conditional use is sought or his agent shall be notified of the hearing by mail.

This Model provides that notice be published seven days before the public hearing required for conditional use permits and actions by the Board of Adjustment. Many Montana communities have weekly local newspapers that are published in mid-week, which can result in an actual notice period of 10-12 days. Although a seven-day notice period offers ample time to notify the public of a scheduled hearing, some municipal officials may wish to incorporate a longer period.

4. At the public hearing any party may appear in person, or through an agent or attorney.
5. Before granting a conditional use permit, the Zoning Commission shall make a written finding that the proposed use will comply with the specific conditions governing the use and the other requirements of this Ordinance, and that the conditional use will not adversely affect the character of the district.
6. Where the proposed conditional use is subject to review as a subdivision under the Montana Subdivision and Platting Act (76-3-101 *et seq.*, MCA), the Zoning Commission and Planning Board shall hold joint and concurrent review, including a joint public hearing(s). Notice of each hearing shall be given in the manner prescribed by this Ordinance and the municipality's subdivision regulations.

SECTION 12. BOARD OF ADJUSTMENT

A. Board of Adjustment Established

A Board of Adjustment (herein after referred as "the Board") is hereby established in accordance with Sections 76-2-321 through 76-2-328, MCA. The City Council shall appoint five members to the Board [under 76-2-322, MCA, the Board may comprise 5 to 7 members], each for a term of three years except that in the initial appointment, one member shall be appointed for a term of one year, two members for a term of two years, and two members for a term of three years. Members of the Board may be removed from office by the City Council for cause upon written charges and after public hearing. Vacancies on the Board shall be filled by resolution of the City Council for the unexpired term of the member affected.

The Montana Supreme Court has indicated that a valid zoning Ordinance must provide for an appellate body, such as a board of adjustment, to prevent injustices that might be associated with strict enforcement of the zoning Ordinance on a particular property with peculiar circumstances. The Municipal Zoning Enabling Act authorizes municipal zoning Ordinances to establish a board of adjustment, and most city and town zoning Ordinances incorporate a board of adjustment. Section 76-2-321(2), MCA, allows the Ordinance to limit the powers of the board and even to give appellate powers to the governing body. The city council could handle appellate functions such as deciding appeals, issuing special exceptions or variances.

Establishing a board of adjustment separate from the city council usually is good zoning form, just as is maintaining separation of the three functions of general government - executive, legislative and judicial. Also, from both a theoretical and practical perspective, the board of adjustment should comprise members who do not sit on the zoning commission or planning board. The board of adjustment is a quasi-judicial body that acts on appeals of administrative decision and on variances from the requirements. This "judicial" function is best performed by independent individuals who did not help draft the regulations. In small communities, however, it is often difficult to find people to serve on the various boards and commissions. Appointing one or two persons from the zoning commission would help maintain continuity of rationale for the regulations and need not undermine impartial judgement.

B. Powers of the Board of Adjustment

The Board shall have the following powers:

1. To hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this Ordinance.
2. To grant variances from the standards of this Ordinance where the Board determines (1) that granting the variance will not be contrary to the public interest, (2) where owing to special conditions a literal enforcement of the provisions of these regulations will result in unnecessary hardship, and (3) where spirit of the Ordinance will be observed and substantial justice done. "Hardship" refers to circumstances peculiar to the particular property. Financial or economic difficulties, or consequences of actions by the property owner are not "hardships" for zoning purposes.

More specifically, the Board may, approve, conditionally approve, or deny any request to modify the following requirements of this Ordinance:

- (a) setback requirements
- (b) yard requirements
- (c) area requirements
- (d) height and width requirements
- (e) parking requirements
- (f) loading requirements

The Municipal Zoning Enabling Act identifies the granting of special exceptions as a third power of the Board of Adjustment. This Model gives the Zoning Commission the authority to issue conditional use permits, which are similar in function to special exceptions in that a more comprehensive review is required. Each municipality must decide whether the board of adjustment or zoning commission is the appropriate body to conduct this more comprehensive review.

C. Proceedings of the Board of Adjustment

1. The Board shall select one of its members as chairman and shall adopt rules necessary to conduct its affairs in keeping with the provisions of this Ordinance. Meetings shall be held at the call of the chairman and at such other times as the Board may determine. The chairman, or in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses. Meetings shall be open to the public.
2. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote indicating such fact, and shall keep records of its examinations and other official actions, and immediately file in the office of the Board. The Board shall make its records and minutes available for public inspection.

D. Procedures for Variance Requests

1. Any person may submit an application for a variance to the Board of Adjustment as provided by the rules of the Board by filing the application with the Zoning Administrator.
2. The Application for Variance must specifically set forth the grounds for requesting the variance, as indicated on the Application form.
3. The Board shall fix a reasonable time for the hearing on the variance request, publish notice of the hearing in a newspaper of general circulation at least 7 days

prior to holding a public hearing, and shall notify by mail the person requesting the variance.

Section 76-2-325, MCA, requires that all meetings of the Board of Adjustment be open to the public. Implicit in holding a public meeting is the requirement that public notice be given. In fact, for all appeals regarding decisions by the Zoning Officer or Commission, public notice of the board meeting is required. The Board of Adjustment should publish notice of all its meetings in the local newspaper. Many municipalities take additional notification steps, including posting notice on the property in question and notifying adjacent property owners by mail.

4. At the hearing any party may appear in person, or be represented by agent or attorney.

E. Requirements Governing Granting of Variances

1. To grant a variance the Board must make a finding that the granting of the variance will be in harmony with the general purpose and intent of this Ordinance, will not be injurious to the neighborhood, is the minimum variance that will make possible the reasonable use of the land, building or structure, and will not be detrimental to the public welfare.
2. In addition the Board must determine:
 - a. That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same district;
 - b. That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance;
 - c. That the special conditions and circumstances do not result from the action of the applicant;
 - d. That granting the requested variance will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, structures, or buildings in the same district.
3. Under no circumstances may the Board of Adjustment grant a variance, nor the City Council grant an appeal, that would allow a use not permissible under the terms of this Ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this Ordinance in the district.

4. Neither the non-conforming use of neighboring lands, structures or buildings in the same district, nor the permitted or non-conforming use of lands, structures or buildings in other districts are grounds for the issuance of a variance.

A Board of Adjustment's generous granting of variances, especially use variances, can seriously undermine the purpose and integrity of a zoning Ordinance. Municipalities can prevent this problem by limiting the powers of the Board of Adjustment, specifically by prohibiting its granting of variances that would allow uses that are not authorized in a district. To grant a variance, the Board of Adjustment must find that an "unnecessary hardship" would otherwise occur with respect to a particular property because of its peculiar shape, size, topography or configuration. "Hardship" refers to circumstances peculiar to the particular property. Financial or economic difficulties, or consequences of actions by the property owner are not "unnecessary hardships" for zoning purposes. The Board of Adjustment's granting of variances also should not result in de facto rezoning, which is properly handled by the City Council through the zoning amendment process.

F. Procedures for Hearing and Acting on Appeals from Actions of Zoning Administrator

1. The Board of Adjustment shall hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by any administrative official or body in the enforcement of this Ordinance.
2. Any person or any officer of the municipal government may file a notice of appeal of any decision made by an administrative person or body within 60 days of date the subject decision was made. The notice of appeal, submitted to the Zoning Administrator, must comply with the rules adopted by the Board of Adjustment.
3. The Zoning Administrator shall promptly transmit to the Board of Adjustment the notice of appeal and all papers constituting the record of the subject decision.
4. The Board of Adjustment shall fix a reasonable time for a hearing of the appeal, give public notice and notify the affected parties. At the hearing, any party may appear in person or be represented by agent or attorney.
5. The Board of Adjustment, in conformity with the provisions of this Ordinance, may reverse, affirm, wholly or in part, or modify the order, decision or action appealed and may make such order, decision, or action as deemed necessary, and to that end shall have the powers of the administrative official whose decision is appealed.

G. Stay of Proceedings

An appeal stays all proceedings in furtherance of the action appealed, unless the administrative official from whom the appeal is taken certifies to the Board of Adjustment after the notice of appeal is filed, that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed other than by a restraining order which may be ordered by the Board or by a court of record on application, on notice to the officer from whom the appeal is taken, and for due cause.

H. Appeals from Decisions of the Board of Adjustment

Appeals from decisions of the Board of Adjustment may be made in accordance with 76-2-327 and 76-2-328, MCA.

1. Any person or persons, jointly or severally, aggrieved by any decision of the Board of Adjustment, any taxpayer, or any officer or department of the municipality may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within 30 days after the filing of the decision of the Board.
2. Upon presentation of such petition the court may allow a writ of certiorari directed to the Board to review such decision of the Board and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which may not be less than 10 days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the Board and on due cause shown, grant a restraining order.
3. The Board shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from, and shall be verified.
4. If, upon the hearing, it appears to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law. Such evidence shall constitute a part of the proceedings upon which the determination of the court will be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.
5. Costs shall not be allowed against the Board unless it appears to the court that it acted with gross negligence, or in bad faith, or with malice in making the decision appealed from.

SECTION 13. AMENDMENTS

A. Initiation

Proposals to amend, supplement, modify or repeal any of the provisions or the district boundaries established by this Ordinance or hereafter established, may be initiated by the City Council, the Zoning Commission, or by petition of any interested resident or property owner. Such a petition shall be submitted to the City Council through the Zoning Commission, which shall review the petition, consider its merits and make a recommendation to the City Council.

B. Requirements for Map Amendments

1. In addition to an accurate and completed amendment application any petition to amend a zoning classification shall include a current map drawn to scale showing all parcels of land included in the petition and the name of the owner of each parcel certified by the County Tax Assessor from the records of his office.
2. A legal description of the property for which a petition to amend a zoning classification is requested shall be included in such petition.

C. Public Hearings Required

1. The Zoning Commission shall hold public hearings on proposed amendments, and interested parties and citizens shall have an opportunity to comment at the hearing. Notice of the time and place of the hearing shall be published in the local newspaper at least 15 days prior to the hearing.
2. If the proposed change involves an amendment to the Official Zoning Map notice of the hearing shall be mailed to all property owners within the affected area and all owners of property within 150 feet of the affected area.
3. After the hearing(s) the Zoning Commission shall make a recommendation to the City Council.
4. After the Zoning Commission makes its recommendation, the City Council shall hold a public hearing on the issue after giving notice in accordance with the procedures above.

5. When a proposed amendment affects the zoning classification of property, and a protest against such change is signed by the owners of 20% or more either of the area of the lots included in such proposed change, or of those immediately adjacent in the rear thereof extending 150 feet therefrom, or of those directly opposite thereto extending 150 feet from the street frontage of such opposite lots, then such amendments may not become effective except by the favorable vote of three-fourths of the City Council.

SECTION 14. SCHEDULE OF FEES

- A. The City Council shall establish a schedule of fees and charges and a collection procedure for zoning permits, conditional use permits, variances and zoning amendments.
- B. Until all applicable fees and charges have been paid in full, no action may be taken on any application or appeal.
- C. Fee Summary
- | | |
|----------------------------------|-------|
| (1) Zoning Permit | |
| Single-family residential | \$ 25 |
| All other | \$ 50 |
| (2) Conditional Use Permit | \$200 |
| (3) Zoning Amendment | \$400 |
| (4) Variance (Bd. of Adjustment) | |
| Single-family residential | \$ 25 |
| All other | \$100 |

The fee schedule in this Model, typical for a small- or medium-sized Montana municipality, is only an example. Local officials should find a balance between two objectives: 1) covering actual costs of processing applications (including staff review time, publishing notice, holding hearings, and making on-site inspections) and 2) keeping fees low enough to promote affordable housing.

SECTION 15. VIOLATION OF ORDINANCE; PENALTIES

A. Filing a Complaint

Whenever a violation of this Ordinance occurs or is alleged to have occurred, any person may file a written complaint. The complaint, stating fully the causes and basis of the

violation, shall be filed with the Zoning Administrator. He shall properly record the complaint and immediately investigate and take action as provided by this Ordinance.

B. Penalties

1. Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violations of conditions and safeguards established in connection with the grant of variances or conditional uses or any of the requirements for conditions imposed by the City Council, shall constitute a misdemeanor. Any person who violates this Ordinance or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$500 for each offense or imprisoned not more than six months, or both, and in addition shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense and be punishable as such (76-2-315, MCA).
2. The owner or tenant of any building, structure, premises or part thereof, and any architect, builder, contractor, agent or other person who commits, participates in, assists, or maintains such violation may be found guilty of a separate offense and suffer the penalties specified above.
3. Nothing set forth in this section shall prevent the City from taking other lawful action as is necessary to prevent or remedy any violation.

SECTION 16. SEPARABILITY CLAUSE

Should any section or provision of this ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, the decision shall not affect the validity of the Ordinance as a whole, or any part thereof other than the part declared to be unconstitutional or invalid.

ARTICLE II. GENERAL REQUIREMENTS

The provisions of this Article shall apply to all lands, uses and structures subject to this Ordinance.

SECTION 17. NONCONFORMING LOTS, USES AND STRUCTURES

A. Purpose

1. Within the districts established by this Ordinance, lots, structures, and uses of land and structures may exist which were lawful at the time this Ordinance was adopted or amended, but which would be prohibited or regulated under the terms of this Ordinance or future amendment. The intent of this Section is to permit these nonconformities to continue until they are removed, but not to encourage their survival. This Ordinance further intends that nonconformities shall not be enlarged, expanded or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district.
2. Nonconforming uses are declared by this Ordinance to be incompatible with permitted uses in the same district. However, to avoid undue hardship, nothing in this Ordinance shall be deemed to require a change in the plans, construction or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this Ordinance and which actual building construction has been carried on diligently. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner. Where excavation, demolition or removal of an existing building has substantially begun preparatory to rebuilding, such excavation or demolition or removal shall be deemed to be actual construction, provided that work shall be carried on diligently.

Effectively dealing with nonconforming uses and other nonconformities requires careful consideration in drafting land use regulations. Municipal governments are not required to encourage the survival of nonconforming uses and structures and under certain circumstances may require that they be eliminated. Local officials should have a thorough grasp of the concept of nonconformities. The term "nonconforming use" is most frequently used, but there are other types of land use nonconformities.

B. Nonconforming Lots of Record

1. In any district, notwithstanding other limitations imposed by this Ordinance, structures permitted in a district may be established on any single lot of record on

the effective date of this Ordinance. The lot must be in separate ownership and not of contiguous frontage with other lots of the same ownership. A lot of record that does not meet lot area or lot width requirements must meet all other requirements of the district.

2. If two or more nonconforming lots with contiguous frontage in single ownership are of record at the time of passage or amendment of this Ordinance, and if any of the lots do not meet the requirements established for lot width and area, the lands involved shall be considered to be an undivided parcel for the purposes of this Ordinance, and no portion of this parcel shall be used or sold in a manner which diminishes compliance; nor shall any division of any parcel be made which creates a lot with width or area that fails to meet the requirements stated in this Ordinance.

Under established legal principle, regulations may not deprive a person of all reasonable use of his property. For example, a 25-foot lot may not conform to minimum lot frontage or size requirements under the land use regulations, or a structure may not be practically built in compliance with side yard requirements. The lot is nonconforming to lot requirements but still may be used for any use permitted by the regulations. However, where a person owns two or more contiguous unimproved lots, he should not be granted a variance where he is capable of using a combination of his lots to create a conforming building lot or lots.

C. Nonconforming Uses of Land and Structures

Where, at the time of passage of this Ordinance, a lawful use of land or a structure exists which would not be permitted by the regulations imposed by this Ordinance, the use may be continued where it remains otherwise lawful, provided:

1. A nonconforming use may not be enlarged or increased, nor extended to occupy a greater area of land or structure than was occupied on the effective date of adoption or amendment of this Ordinance;
2. No nonconforming use may be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use on the effective date of adoption or amendment of this Ordinance;
3. Should any nonconforming use cease for any reason for a period of more than one year, any subsequent use of the land or structure shall conform to the regulations specified by this Ordinance for the district in which such land is located;
4. No additional nonconforming structure shall be erected in connection with such nonconforming use of land or structures.

D. Nonconforming Structures

Where a lawful structure exists on the effective date of adoption or amendment of this Ordinance but becomes nonconforming under the terms of this Ordinance by reason of restrictions on area, lot coverage, height, yards, location on the lot, or other requirements concerning the structure, such structure may be continued, provided it remains otherwise lawful, subject to the following provisions:

1. A nonconforming structure may not be enlarged or altered in a way which increases its nonconformity, but any structure or portion thereof may be altered to decrease its nonconformity.
2. Should a nonconforming structure or nonconforming portion of structure be destroyed by any means to an extent of more than 50 percent of its replacement cost at the time of destruction, it shall not be reconstructed except in compliance with the provisions of this Ordinance.
3. Should a nonconforming structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.
4. Nothing in this Ordinance shall be deemed to prevent the routine repair and maintenance of a nonconforming structure.
5. Nothing in this Ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any officials charged with protecting the public safety, upon order of such official.

E. Nonconforming Manufactured Homes

1. A manufactured home which lawfully exists on the effective date of this Ordinance, but which becomes nonconforming under this Ordinance, shall be allowed to continue for a 10-year phase-out period, after which the manufactured home must be removed from the premises or, where applicable, brought into conformance with the requirements.
2. Where a nonconforming manufactured home is occupied at the date of expiration of the 10-year phase-out period, the city must ensure that a suitable affordable-priced site is available for relocating the manufactured home, or that an alternative affordable housing unit is available for the occupant before requiring the relocation of the nonconforming manufactured home.

Local government may require the eventual removal of nonconforming manufactured homes, provided that the land use regulations provide a reasonable procedure. Two key requirements are that (1) a reasonable amortization period (e.g., 10 years) is provided, and (2) a reasonably-priced and conforming site is available for the manufactured home, or that an alternative suitable affordable housing unit is available for the manufactured home occupant. If the municipality adopts provisions for the eventual removal of nonconforming manufactured homes, the local officials should be prepared to locate a suitable site where the manufactured home will be conforming, or locate an alternative affordable housing unit.

SECTION 18. HOME OCCUPATIONS

A. Requirements for Permitted Home Occupations

A home occupation may be conducted as a secondary use in a dwelling, provided that:

1. The use of the dwelling for the home occupation clearly must be incidental and subordinate to its use for residential purposes, and not more than 25 percent of the floor area of the dwelling may be used in the conduct of the home occupation.
2. There may be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of the home occupation other than one sign, not exceeding 6 square feet in area, non-illuminated, and mounted flat against the wall of the principal structure.
3. No traffic may be generated by a home occupation in greater volumes than would normally be expected in a residential neighborhood, and any need for parking generated by the conduct of the home occupation shall be met off the street. No home occupation, or any required parking for the home occupation, shall use the parking space required for the residence.
4. No vehicles, except those normally used as passenger vehicles, will be used for the home occupation unless stored or parked elsewhere.
5. No equipment or process shall be used in a home occupation which creates noise, vibration, glare, fumes, odors, or electrical interference detectable by normal senses off the lot.
6. Any equipment or materials used in connection with a home occupation shall be stored within the principal structure or in an enclosed space outside of the principal structure.

B. Procedures for Permitting a Home Occupation

Any person considering the establishment of a home occupation must submit an application to the Zoning Administrator under the procedures specified in Section 10, Procedures for Application, Reviewing and Granting Permits.

C. Home Occupations Allowed as Conditional Uses

Where a proposed home occupation would not conform to any one of the conditions specified in A. above, the home occupation must be reviewed as a conditional use under the procedures of Section 11, Conditional Use Permits.

Home offices and home occupations are a growing trend. By reducing home-to-work travel, home occupations can have a positive community benefit by reducing traffic volumes, and can assist families, especially lower-income families, earn a living. Local regulations should allow home occupations that have low impact regarding traffic, noise, dust, smoke or light as a right under reasonable requirements, rather than require conditional use permits or special exceptions. This Model allows these home occupations with low impact as a permitted use. Home occupations that have greater potential for impacts may be allowed as conditional uses.

SECTION 19. FLOOD HAZARD AREAS

No building or structure may be built or located within any area identified by the City Council as presenting a flood hazard. Any construction or location of buildings or other structures within a 100-year floodplain officially designated by the Montana Department of Natural Resources and Conservation must conform to the city or county floodplain management regulations.

SECTION 20. AIRPORT INFLUENCE AREAS

No structure shall be constructed or located, nor any tree allowed to grow to a height in excess of 1 foot in height for each 20 feet in horizontal distance beginning at a point 200 feet from the end of each runway and extending to a distance of 5,000 feet from the end of the runway. The above requirement shall apply to an area having a width of 250 feet beginning at a point 200 feet from the end of each runway, widening thereafter uniformly to a width of 1,250 feet at a distance of 5,000 feet beyond the end of the runway, its centerline being the continuation of the centerline of the runway.

Local officials are not required to zone airports, but by consulting and cooperating with the local airport board, municipal officials often can enact land use regulations that enhance the safety of the local airport. This Model incorporates height limitations recommended by the Federal Aviation Administration (FAA) within the aircraft approach zone for an airport operating under visual flight rules - typical of most airports in Montana. Local officials should consult with the local airport board to determine what zoning standards, if any, would be appropriate for their airport.

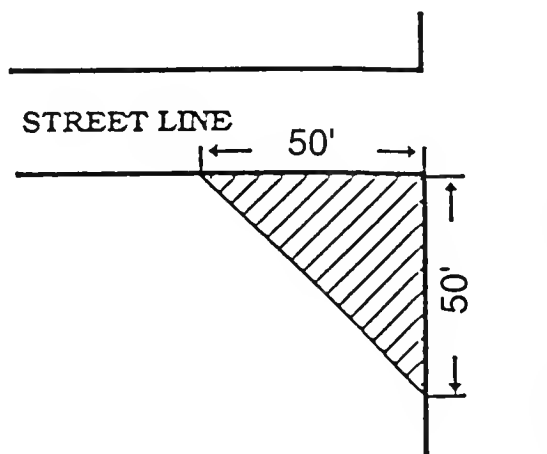
SECTION 21. SUPPLEMENTAL DISTRICT REGULATIONS

A. Purpose

Supplementary district regulations are intended to govern miscellaneous issues related to uses or conditions that occur in more than one zoning district.

B. Visibility at Intersections

On a corner lot in any district, for a distance of 50 feet from the point of intersection along each street, nothing may be erected, placed, planted, or allowed to grow in a manner that would impede the visibility of vehicles entering the intersection.



C. Fences, Walls and Hedges

Unless other provisions of this Ordinance specify otherwise, fences, walls and hedges are permitted in any required yard, provided that no fence, wall or hedge in or along the edge of a front yard shall be no more than 6 feet in height, subject, however to the restrictions of B, Visibility at Intersections, above.

D. Structures to Have Legal and Physical Access

Every principal building erected or placed on a lot shall have legal and physical access to a public street, other than an alley, or an approved private street, and all structures shall be so located on lots as to provide required off-street parking and safe and convenient access for emergency vehicles.

E. Exceptions to Height Regulations

The height limitations contained in the district regulations do not apply to spires, belfries, cupolas, antennas, water tanks, ventilators, chimneys, or other appurtenances not intended for human occupancy and usually required to be placed above the roof level.

F. Number of Principal Structures on Lot

In any district, more than one structure housing a permitted or conditional principal use may be erected on a single lot, provided that minimum yard areas and other requirements of this Ordinance are met for each structure as though it were located on an individual lot.

Removing Barriers to Affordable Housing

Many municipal zoning Ordinances allow only one principal structure on a lot. However, some communities, especially those facing a shortage of affordable housing, may want to allow construction or renovation of a second (typically small) residential structure on a lot to offer a low-cost housing unit.

G. Parking or Storage of Certain Vehicles

No more than one automotive vehicle without current license plates may be parked or stored on any residentially zoned property, except those in completely enclosed buildings.

Although other municipal regulations may address the issue of inoperable or "junk" vehicles, this provision allows local officials to address the problem through the zoning Ordinance.

H. Fire Hazards

Any activity involving the use or storage of flammable or explosive materials must be entirely enclosed with protective fencing at least 6 feet in height and be protected by adequate fire-fighting and fire prevention equipment and by normal safety devices. The activities must be set back not less than 100 feet from all lot lines. Such activities will be subject to the fire safety standards prescribed by the City Fire Marshall or other appropriate authority.

I. Livestock

Livestock, as defined in Section 7, Definitions, shall not be maintained in any district within the corporate boundaries of the municipality.

J. Bars, Taverns, Lounges, Night Clubs

No building, structure or premises shall be used as a bar, tavern, lounge, night club or any commercial establishment that serves alcoholic beverages within 600 feet, and on the same street, of any building used exclusively as a school, church, synagogue or other place of worship. The distance shall be measured in a straight line from the center of the nearest entrance of the place of worship or school to the nearest entrance of the proposed establishment. This distance restriction does not apply to establishments where sale of table wine and beer is solely in the original package for off-premise consumption.

Section 16-3-306, MCA, prohibits the issuance of a state liquor, beer or wine license to establishments serving alcohol located within 600 feet and on the same street of schools, churches, synagogues or other places of worship. Including this provision in a local zoning Ordinance promotes consistency between local land use regulation and state liquor control laws. Municipal officials should review all the provisions of 16-3-306, MCA, when drafting or revising their zoning Ordinance.

SECTION 22. OFF-STREET PARKING

A. Purpose

The intent of off-street parking requirements is to provide convenient and safe access to property, reduce the need for on-street parking and thus congestion on streets, alleviate hazards associated with access to traffic generating business and industrial uses, provide adequate and safe parking for residents and business customers, protect residential uses from the undesirable effects of abutting traffic, and maintain the traffic carrying capacity of the road system serving the jurisdiction.

Requiring a reasonable amount of off-street parking can significantly benefit a community by reducing parking and congestion on streets, and providing safe pedestrian access to businesses or residential developments. Trying to determine the precise number of off-street parking spaces that would properly serve a particular use is less important in a zoning Ordinance than establishing the principle that off-street parking is essential and that enough spaces should be provided to prevent congestion and foster citizen convenience.

Because of the greater population base, businesses in larger cities often have more customers per floor area, and thus they have a greater need for more off-street parking than do similar businesses in smaller communities. The number of off-street parking spaces suggested in this Model may be inadequate for Montana's larger cities. By the same token, smaller communities may find that fewer spaces can be required and still achieve the benefits of off-street parking. Observing and analyzing the demands for parking within the individual community is the best method to develop off-street parking requirements.

B. Design

1. An off-street parking space shall be at least 9 feet in width and 18 feet long.
2. Off-street parking areas must be accessible from a public street.
3. The access to an off-street parking area must be at least 24 feet wide, or 12 feet wide where one-way drives are used.
4. Off-street parking spaces serving residential uses must be located on the same lot as the dwelling, and may not be located in any front yard except in the driveway.
5. Off-street parking areas serving commercial, industrial, public or institutional uses must be located within 500 feet of the use, and may not be located in required front yards.
6. Off-street parking areas serving multi-family residential developments of more than 10 units, commercial, industrial and institutional uses must comply with the following provisions:
 - a. Grading and Drainage: Off-street parking areas shall be graded and any needed swales, culverts or other drainage facilities installed to remove surface run-off in a manner that does not adversely affect adjacent properties, public streets or surface waters

- b. Surfacing: Off-street parking areas shall be surfaced with gravel or equivalent material. Parking areas containing 20 or more spaces shall be surfaced with asphalt, paving or other hard surface.
- c. Screening: Where an off-street parking area abuts a residential use or zoning district, the parking area shall be effectively screened at the property line(s) by an acceptably designed sight-obscuring wall, fence or planting screen.
- d. Lighting: No lighting used to illuminate a parking area shall face, or have its light source directly visible from any residential use or residential zoning district.

C. Number of Spaces

The following number of off-street parking spaces are required:

1. Residential

- Single family and mobile home -- 2 per dwelling unit
- Multiple-family -- 1 1/2 per dwelling unit
- Boarding houses, rooming houses -- 1 per room for rent

2. Commercial

- Auto repair, body shops -- 2 per service bay
- Banks, financial institutions -- 2 per 1,000 square feet of gross floor area
- Bowling alleys -- 4 per lane
- Drive-in restaurants -- 1 per 50 feet of floor area or a minimum of 10, whichever is greater
- Funeral homes, mortuaries -- 1 one per 4 seats
- Hotels, motels -- 1 one per rental unit
- Medical, dental clinics -- 4 per 1,000 square feet of gross floor area
- Offices: business, professional, governmental -- 2 per 1,000 square feet of gross floor area
- Restaurants, taverns -- 1 per 4 seats of customer seating
- Service station -- 1 per 2 gasoline pumps and 2 per service bay
- Theater -- 1 per 4 seats
- All retail establishments not otherwise classified -- 4 per 1,000 square feet of gross floor area
- All other commercial uses -- 2 per 1,000 square feet of gross floor area

3. Institutions

- Churches -- 1 per 4 seats
- Community centers -- 4 per 1,000 square feet of gross floor area
- Hospitals and nursing homes -- 1 per 2 beds
- Libraries, museums -- 2 per 1,000 square feet of gross floor area
- Schools, elementary -- 1 per classroom, plus 1 per 8 seats in auditorium
- Schools, secondary -- 1 per four students plus 1 per classroom

- Other institutions -- 2 per 1,000 square feet of gross floor area

4. Industrial

- Motor freight companies -- 1 per 1,000 square feet of gross floor area
- Production and manufacturing -- 2 per 1,000 square feet of gross floor area
- Warehousing -- 1 per 1,000 square feet of gross floor area

Local officials may want to include additional landscaping requirements for large parking areas typically associated with such uses as shopping malls, commercial or industrial centers, and housing complexes. Landscaping can enhance the visual impacts of large areas of asphalt and can increase the attractiveness of highway commercial or industrial areas. The following are examples of landscaping requirements that might be included in a local zoning Ordinance:

1. "Landscaping" means any combination of living plants such as trees, shrubs, vines, ground covers, flowers or lawns; and may include materials such as decorative rock, stone and bark, or structural features such as fountains, pools, art works, screens, walls, fences and benches.
2. Landscaping shall be required on a minimum of 7% of the parking area.
3. A minimum of 75% of the required area of landscaping shall consist of living plants, and the remaining 25% may consist of rock, stone, bark, structural features or walkways. Trees shall be the major design element in landscaping of parking areas. A watering or irrigation system shall be installed to sustain the plants in healthy growth.
4. Where landscaping is required, landscaping plans must be submitted for approval with the application.

D. Joint Use of Off-street Parking Facilities

The applicant for a proposed use may apply to the Zoning Commission to use the off-street parking facility of another use. The Zoning Commission may approve an application for joint use, provided:

1. The parking facility is within 500 feet of the proposed use.
2. There will be no substantial conflict between the principal operating hours of the uses for which joint use of parking facilities is proposed, and no conflicting demands for parking by employees, customers or clients.

3. Where necessary, the applicant shall present an appropriate and enforceable lease or agreement, executed by the parties for the joint use. The term of the lease or agreement shall be for the duration of time that each use exists at the said location.

SECTION 23. OFF-STREET LOADING

A. Purpose

The intent of off-street loading requirements is to avoid traffic hazards and minimize congestion of streets by requiring that off-street loading areas be provided on the same lot as the building served by delivery trucks, and that such areas be adequate in size and number to provide the service needed without affecting adjacent properties.

B. Design of Loading Spaces

1. Off-street loading spaces shall be provided on the same lot as the use they serve, and shall not occupy the front yard of the lot.
2. Each loading space shall be designed to have access to a street or alley in a manner that does not interfere with traffic movement.
3. Each loading space shall be at least 10 feet by 25 feet in size or designed to accommodate the largest service trucks expected to serve the use.
4. All or part of the off-street loading requirements may be met by loading facilities within buildings.

C. Number of Off-Street Loading Spaces

One (1) off-street loading space shall be provided for every industrial, institutional and commercial use having a gross floor area of 5,000 square feet, plus one additional loading space for each additional 10,000 square feet of floor space.

SECTION 24. SIGNS

A. Purpose

Sign regulations are intended to promote and protect the public safety and welfare by regulating existing and proposed outdoor advertising signs and signs of all types. The purpose of this section is to protect property values, create a more attractive economic and business climate, enhance and protect the physical appearance of the community, and preserve the scenic and natural beauty of designated areas by regulating existing and proposed outdoor advertising signs, and outdoor signs of all types. It is further intended to reduce sign or advertising distraction and obstructions that may contribute to traffic

accidents, reduce hazards that may be caused by signs overhanging or projecting over public rights-of-way, provide more open space, curb the deterioration of the natural environment and enhance community development. Nothing in this regulation is intended to interfere with constitutional rights related to free speech.

B. Signs Permitted in All Districts Without a Permit

The following signs are permitted in all zoning districts and do not require a permit:

1. Signs advertising the sale, lease or rental of the premises upon which the sign is located, and which do not exceed 12 square feet in area, except in all residential districts where the area of the sign shall not be more than 6 square feet.
2. Signs bearing only property numbers, post box numbers, names of occupants of premises, or other identification of premises not having commercial connotations.
3. Flags and insignia of any government except when displayed in connection with commercial promotion.
4. Legal notices; identification, information or directional signs erected or required by governmental bodies.
5. Integral decorative or architectural features of buildings, except letters, trademarks, moving parts, or moving lights.
6. Signs directing and guiding traffic and parking on private property, but bearing no advertising matter.
7. Bulletin boards for churches, schools, or other public, religious or educational institution provided the sign is located a minimum of 10 feet from the established right-of-way line of any street or highway and does not obstruct traffic visibility at street or highway intersections.
8. Political or campaign signs erected temporarily and removed no later than 15 days following the election.

C. Regulations for On-Site Signs Requiring a Permit

All on-site signs permitted as accessory uses in business and industrial districts require a permit and are subject to the following provisions:

1. Projection: Projection of wall signs may not exceed 2 feet measured from the face of the building. No wall sign may project above the highest point of the roof structure of the building to which it is attached.
2. Set back: No on-site free standing sign may be set closer to the lot line adjacent to

a street than the required minimum set back for the principal uses permitted in the district. No sign may be erected or placed closer than 50 feet from a side or rear lot line abutting a residential district.

3. Roof Signs: No sign may be placed on the roof of any building.
4. Moving devices: No sign or part thereof may contain or consist of banners, posters, pennants, ribbons, streamers, spinners, or other similar moving devices. Devices such as strings of lights may not be used for the purpose of advertising or attracting attention.
5. Lighting: An illuminated sign or lighting device may emit only light of constant intensity, and no sign may be illuminated by or contain flashing, intermittent, rotating, or moving lights. An illuminated sign or lighting device may not be placed or directed so that the beams and illumination therefrom cause glare or reflection that may constitute a traffic hazard or nuisance. All wiring, fittings and materials used in the construction, connection and operation of electrically illuminated signs shall be in accordance with the provisions of the state electrical code.
6. Height: No free standing sign shall exceed 30 feet in height.
7. Height Clearance: Signs that extend over a sidewalk or walkway shall have a vertical clearance of at least 8 feet.
8. Number of signs permitted: In business and industrial districts, each use is permitted one wall sign. In addition, one free standing sign is permitted for each building, regardless of the number of businesses or industrial uses conducted in the building.
9. Permitted surface area: The total surface area of all signs is limited to 2 square feet of sign for each lineal foot of front width of the business or industrial building, provided that the maximum total surface area for all signs does not exceed 100 square feet.

D. Regulation of Off-Site Signs Requiring a Permit

1. Set Back: No off-site free standing sign may be set closer to the lot line adjacent to a street than the required minimum set back for the principal uses permitted in the district. No sign may be erected or placed closer than 50 feet from a side or rear lot line abutting a residential district.
2. Lighting: Any illuminated sign or lighting device may employ only light emitting a light of constant intensity, and no sign may be illuminated by or contain flashing, intermittent, rotating, or moving lights. An illuminated sign or lighting device may not be placed or directed so that the beams and illumination therefrom cause glare or

reflection that may constitute a traffic hazard or nuisance. All wiring, fittings and materials used in the construction, connection and operation of electrically illuminated signs shall be in accordance with the provisions of the state electrical code.

3. Area: No off-site sign may exceed 32 square feet in area.
4. Height: No off-site sign shall exceed 35 feet in height as measured from the normal grade at the sign.

E. Regulations for Temporary Signs Requiring a Permit

Temporary signs may not exceed 50 square feet in area and may be erected for a period of 60 days plus the construction period.

This Model presents a set of fairly detailed sign requirements. Smaller municipalities may feel that issues surrounding signs can be addressed with fewer requirements.

SECTION 25. SCREENING AND BUFFERING

Whenever a non-residential use or off-street parking area abuts a residential use, the use shall be effectively screened at the property line on all sides which adjoin or face the residential district or institutional use by an acceptably designed, sight obscuring wall, fence or planting screen. The fence, wall, or planting screen shall be not less than 4 feet nor more than 6 feet in height and shall be maintained in good condition. Where terrain or other natural features effectively serve as a screen, no wall, fence or planting screen is required.

SECTION 26. YARD MEASUREMENTS

A. Front Yard

Depth of required front yards is measured at right angles to a straight line joining the foremost points of the side lot lines. The foremost point of the side lot line, in the case of rounded property corners at street intersections, will be assumed to be the point at

which the side and front lot lines would have met without such rounding. Front and rear yard lines will be parallel.

B. Side Yard

Width of a required side yard is measured in such a manner that the yard established is a strip of the minimum width required by the district regulations with its inner edge parallel with the side lot line.

C. Rear Yard

Depth of a required rear yard is measured in such a manner that the yard established is a strip of the minimum width required by district regulations with its inner edge parallel with the rear lot line.

SECTION 27. PLANNED UNIT DEVELOPMENTS (PUD)

Modern zoning regulations can benefit the community by allowing relaxation of certain design requirements such as lot size and dimensions, yard and setback requirements to encourage development of affordable housing. But where design standards are relaxed, careful planning is essential to ensure provision of vital features of residential living, such as privacy, usable yard areas, safe access onto streets. Simply reducing or relaxing design standards without careful design and proper review can easily lead to undesirable residential development. The conditional use permit process suggested in this Model is not onerous. Affordable and livable housing can be developed under the reasonable review process provided in this Model.

A. Purpose

The purpose of this section is to allow, with adequate review, flexibility in design of developments that do at least several of the following:

1. Encourage development with mixed uses, particularly a variety of housing types and densities.
2. Create or preserve usable open space and recreation areas.
3. Preserve the natural characteristics of the land including topography, native vegetation and scenic views.
4. Avoid construction in unsuitable areas.

5. Encourage creativity in design, including flexibility in residential siting to achieve energy conservation.
6. Allow efficient provision of streets, utilities and other services.
7. Provide lower-cost housing affordable by low- and moderate-income families within the community.

B. Definition

A planned unit development (PUD) is a land development project designed and planned as a single entity under a plan that offers a variety of land uses, housing types and densities, and design features in addition to those allowed by right or as a conditional use in the zoning district.

C. Application and Review

1. Any person requesting approval of a planned unit development shall submit an application for conditional use under the provisions of Section 11, Conditional Uses of this Ordinance. The application shall be accompanied by the required review fees and a PUD plan, described below.
2. The PUD plan shall provide the following:
 - a. A vicinity map showing the location of the site in relationship to surrounding areas and showing the existing land uses and zoning of the site and surrounding properties.
 - b. A map drawn to approximate scale showing:
 - location, types and heights of existing and proposed buildings and other structures, including density and number of dwelling units or other uses of each structure
 - existing and proposed streets, alleys, bikeways, pedestrian walkways, and vehicle circulation patterns, off-street parking areas
 - locations, dimensions and sizes of common and open space areas, and a landscaping plan showing areas to be landscaped and those that will be left in a natural state
 - physical features such as streams, ponds, canals, rights-of-way, utilities
 - c. A written statement describing:
 - a schedule for installing improvements, developing lots and constructing structures

- proposed types of ownership of dwelling units and other uses, and restrictive covenants, if any
 - means of providing maintenance of common facilities and open space areas
3. A PUD will be reviewed and approved under the procedures for conditional uses pursuant to Section 11, Conditional Use Permits, of this Ordinance. Where the proposed PUD is subject to review as a subdivision under the Montana Subdivision and Platting Act, the Zoning Commission and Planning Board shall hold joint and concurrent review, including a joint public hearing(s). Notice of each hearing shall be given in the manner prescribed by this Ordinance and the municipality's subdivision regulations.
 4. A PUD must conform to the conditions prescribed by the Zoning Commission pursuant to Section 11, B, 3, of this Ordinance.

ARTICLE III. DISTRICTS ESTABLISHED

Within the jurisdictional area specified in Section 4 of this Ordinance, zoning districts are hereby established and are shown on the Official Zoning Map described in Section 6. Sections 29 through 34 of this Ordinance set forth the specific requirements which must be met by any proposed building, structure or use located within each district.

SECTION 28. INTERPRETATION OF DISTRICT BOUNDARIES

Where uncertainty may exist as to the location of district boundaries as shown on the Official Zoning Map, the following rules shall apply in interpreting the nearest logical line to that shown:

1. Boundaries shall be construed as following the centerline of streets, highways or alleys.
2. Boundaries shall be construed as following the centerline of streams, rivers, canals or ditches.
3. Boundaries shall be construed as following a line midway between the main tracks of a railroad right-of-way.
4. Boundaries shall be construed as following platted lot lines.
5. Boundaries shall be construed as following the boundaries of the incorporated city limits.
6. Boundaries shall be construed as parallel to or extensions of features indicated on the Official Zoning Map.
7. Where physical or cultural features existing on the ground are different from those shown on the Official Zoning Map, or where circumstances arise not covered by the rules above, the Board of Adjustment shall interpret the district boundaries.

The administrative and enforcement provisions can be standardized to some extent in a model Ordinance. However, the requirements for zoning districts should not be simply lifted from a model, but need to be tailored to the individual community. The substantive provisions set forth in the district requirements - number of districts, uses allowed and prohibited, and development standards - make each community's zoning regulations unique.

As a general rule, fewer districts are better than more. Small communities often can administer effective zoning regulations with only 5 or 6 districts dealing with residential, commercial and industrial uses. Larger cities, to protect the public health and safety, usually need more districts and more requirements to properly address higher density and more intensive and varied development. When a zoning ordinance incorporates fewer districts, those districts must be more general in terms of what uses are allowed. When more districts are used, they can be more restrictive. In deciding how many districts to incorporate into an Ordinance, the key considerations are 1) to ensure that there is a reasonable amount of suitable locations within the municipality for all legitimate uses, and 2) to protect the public health and safety and welfare by appropriately separating uses.

In determining the number, location and boundaries of districts, local officials should consider the existing land use patterns and the comprehensive plan. In *Little v. Flathead County*, the Montana Supreme Court clearly expressed the requirement that the zoning ordinance must conform to the comprehensive plan. Although the land use map of the comprehensive plan often is "broad brush," the specifically defined boundaries of the zoning districts must reflect the land use pattern identified by the land use map of the plan.

SECTION 29. LOW DENSITY RESIDENTIAL DISTRICT (R-1)

A. PURPOSE

This district is intended to provide for the development of single-family residences and two-family residences at a density compatible with existing residential development. This district also accommodates those institutional and public uses compatible with residential neighborhoods.

B. PERMITTED PRINCIPAL USES

The following uses are permitted within this district:

1. Single-family dwellings: constructed on site or assembled as modular homes, but not including manufactured homes
2. Two-family dwellings
3. Churches
4. Nursing homes
5. Libraries, museums, schools: public or private
6. Parks, playgrounds, recreational facilities
7. Where licensed by the Montana Department of Health and Environmental Sciences or Department of Family Services - group homes serving disabled persons, half-way houses providing drug or alcohol rehabilitation, adult foster family day-care facilities, and group day-care homes serving 12 or fewer children
8. Youth foster homes, or youth group homes

C. CONDITIONAL USES

The following uses must comply with the additional conditions specified below. Approval of these conditional uses must be obtained from the Zoning Commission under the provisions of Section 11, Conditional Use Permits.

<u>USES</u>	<u>CONDITIONS</u>
1. Manufactured homes, Class A	1. Is generally compatible with architectural style of the residences in the neighborhood.
2. Nursing Homes; 24-hour-per-day care facilities	<ol style="list-style-type: none">1. Conform to off-street parking requirements specified in Section 22.2. Provide safe ingress/egress onto public streets.3. Lot will be of adequate size and width to accommodate the proposed use, and the yard and parking requirements.

In this Model, only Class A manufactured homes are allowed in an R-1 district, and then only as conditional uses. However, local officials have the discretion to exclude manufactured homes from R-1 districts (the difference in construction, appearance, size and shape, and the potential for decreasing property values of surrounding homes may be several reasons). On the other hand, local officials could permit Class A (or other) manufactured homes in R-1 as a matter of right. **The key to complying with court decisions is to ensure that a reasonable percentage of zoned residential area within the community is available for placing manufactured homes.**

- | | |
|---|--|
| 3. Planned unit developments that seek waivers from district requirements, in accordance with the requirements of Section 27, Planned Unit Developments | 1. For PUD's containing residences, the development plan provides for placement of housing units and street and open space design and layout that ensures (a) privacy for residents, (b) safe entry from lots onto public streets, (c) usable yard areas, (d) adequate off-street parking, (e) proper installation of utilities, and (f) access by emergency vehicles. |
| 4. Home Occupations not conforming to Section 18, A. | 2. Placement of structures shall take into consideration topography, privacy, building height and orientation, drainage and aesthetics. |
| | 1. Conditions as specified by the Zoning Commission pursuant to Section 11, B, 3. |

D. ACCESSORY AND TEMPORARY USES PERMITTED

The following accessory and temporary uses are permitted in this district:

1. Accessory buildings and uses incidental to the above principal uses.
2. Temporary buildings for and during construction only.
3. Home occupations under the requirements of Section 18.

E. LOT AREA AND WIDTH

Except for existing lots of record which, because of ownership, cannot be reassembled to conform to this requirement, the following lot areas and widths are required:

1. Single-family dwelling -- Each lot shall contain a minimum of 7,000 square feet, and be at least 50 feet wide.

2. Two-family dwellings – Each lot shall contain a minimum of 8,000 square feet, and be at least 50 feet wide.
3. Where either or both the water supply and sewage treatment will be provided on-site, the minimum lot size shall be determined by the Montana Department of Health and Environmental Sciences.

F. YARD REQUIREMENTS

Every lot shall have the following yard requirements as measured from the farthest extension of the structure:

1. Front Yard – A 25-foot yard shall be provided on all street frontages (as measured from the curbline, drainage swale or equivalent drainage facility). Corner lots shall be construed as having two frontages, each of which shall require a 25-foot yard.
2. Side Yard -- Side yards abutting interior lot lines shall not be less than 10 feet.
3. A rear yard of at least 15 feet shall be provided, except where a garage is located within the rear yard, the rear yard may be reduced to 3 feet.

G. BUILDING HEIGHT

Maximum height for all buildings and other structures shall be 30 feet.

H. SATELLITE DISHES AND RADIO ANTENNAS (TOWERS)

1. Satellite dishes and radio antennas or towers may be placed in the rear yard.
2. In the event that a usable signal cannot be obtained from the rear yard, the dish, antenna or tower may be located on the side or front, provided that no dish, antenna or tower may be placed in a required front or side yard.

Courts in other states have held that regulation of satellite dishes and communication antennas or towers must be based on clear public health, safety or aesthetic objectives. Communities have regulated the devices for safety reasons (e.g., to prevent obscuring the visibility of vehicle drivers), and for aesthetic reasons (e.g., to ensure general compatibility with the neighborhood). Courts have upheld a Federal Communications Commission regulation that forbids municipalities from totally prohibiting amateur "ham" radio towers. However, municipalities may regulate ham radio towers where the needs of the radio operators can be reasonably accommodated.

I. OFF-STREET PARKING

1. Single-family dwellings -- Two off-street parking spaces are required per dwelling unit.
2. Two-family dwellings -- 1 1/2 off-street parking spaces is required per dwelling unit.
3. Numbers of non-residential parking spaces and all off-street parking requirements shall comply with Section 22 of these regulations.

J. SIGNS

The following signs are permitted in this district:

1. For residential uses, non-illuminated signs a maximum of 8 square feet in area.
2. For all other uses, non-illuminated signs, including bulletin boards at schools and churches, not exceeding 16 square feet in area, provided the sign is located at least 10 feet from any road right-of-way and does not obstruct traffic visibility.

SECTION 30. MEDIUM DENSITY RESIDENTIAL DISTRICT (R-2)

A. PURPOSE

The purpose of this district is to recognize the existing residential neighborhoods of the community as well as those areas which are deemed appropriate for residential expansions. A variety of residential types and densities, including multiple family and manufactured homes, will be accommodated to provide a balance of housing types within the community. It is intended that this district be maintained and expanded to preserve the residential attractiveness in a mixed use atmosphere. This district also will accommodate those institutional and public uses compatible with residential neighborhoods.

B. PERMITTED PRINCIPAL USES

The following uses are permitted within this district:

1. Single-family dwellings: constructed on site, assembled as modular homes, and Class A manufactured homes
2. Class B manufactured homes under the special provisions of Subsection E, below
3. All manufactured homes in manufactured home parks
4. Multiple-family dwellings
5. Boarding houses
6. Public or private schools
7. Churches and other places of worship
8. Libraries; museums
9. Parks and recreation facilities
10. Where licensed by the Montana Department of Health and Environmental Sciences or Department of Family Services - group homes serving disabled persons, half-way houses providing drug or alcohol rehabilitation, adult foster family day-care facilities, and group day-care homes that serve 12 or fewer children
11. Youth foster homes, or youth group homes

C. CONDITIONAL USES

The following uses must comply with the additional conditions specified below. Approval of these conditional uses must be obtained from the Zoning Commission under the provisions of Section 11, Conditional Use Permits.

USES

CONDITIONS

- | | |
|----------------------------|--|
| 1. Manufactured home parks | 1. Conform to Manufactured (mobile) home park requirements in local subdivision regulations. |
|----------------------------|--|

- | | |
|---|--|
| 2. Nursing homes; hospitals
24-hour-per-day care facilities | 1. Conform to off-street parking requirements specified in Section 22.
2. Provide safe ingress/egress onto public streets.
3. Lot is of sufficient size and width to accommodate the proposed use, and yard and parking requirements. |
| 3. Planned unit developments that seek waivers from district requirements, in accordance with the requirements of Section 27, Planned Unit Developments | 1. For PUD's containing residences, the development plan provides for placement of housing units and street and open space design and layout that ensures (a) privacy for residents, (b) safe entry from lots onto public streets, (c) usable yard areas, (d) adequate off-street parking, (e) proper installation of utilities, and (f) access by emergency vehicles.
2. Placement of housing units shall take into consideration topography, privacy, building height and orientation, drainage and aesthetics. |
| 4. Home Occupations not conforming to Section 18, A. | 1. Conditions as specified by the Zoning Commission pursuant to Section 11, B, 3. |

D. ACCESSORY AND TEMPORARY USES PERMITTED

The following accessory and temporary uses are permitted in this district:

1. Accessory buildings and uses incidental to the above uses.
2. Temporary buildings for and during construction only.
3. Home occupations under the requirements of Section 18.

E. SPECIAL PROVISIONS FOR CLASS B MANUFACTURED HOMES;

Class B Manufactured Homes

1. Each manufactured home must be placed on a permanent masonry foundation, or
 - a. provided with anchors and cable tie downs for securing the manufactured home, and
 - b. skirted, entirely enclosing the bottom section within 60 days after placement. Skirting must be of materials compatible with siding of manufactured home.
2. Each manufactured home shall have siding material of a type customarily used on site-constructed residences.
3. The tongue, wheels, transporting lights and removable towing apparatus must be removed after placement on the lot and before occupancy.

In this Model, a Class A manufactured home is allowed in the R-2 district as a permitted use, and a Class B manufactured home is permitted in R-2 under special conditions: 1) either on a permanent foundation or with anchors and skirting, 2) siding and skirting must be of materials commonly used on conventional residences, and 3) the tongue, wheels and towing apparatus must be removed. These special conditions are intended to minimize the visual impact of a manufactured home in a neighborhood of conventional housing, yet to allow the placement of qualifying units without the process involved with conditional use permits. Class C units, which are built prior to July 1, 1976, and do not meet the HUD Code, are only allowed in manufactured home parks.

The manufactured home provisions of this Model are intended to balance the protection of public health, safety and aesthetic concerns with the benefits manufactured homes offer for affordable housing. However, it is important for local officials to keep in mind that they have broad discretion in addressing manufactured homes. For example, in R-2 districts, Class A and B manufactured homes could be allowed on individual lots only as conditional uses or under special provisions. Also, an Ordinance could go further than this Model by including such additional provisions as: requiring enclosed storage within the skirting or in an accessory storage shed; allowing only one unit be placed on an individual lot (to avoid the congested appearance that two manufactured homes on one lot can create); or requiring that the length cannot exceed four times the width.

Officials should be cautious about applying standards for manufactured homes that would not apply to conventional homes, such as requiring a minimum floor area. But because manufactured homes are often different from site-built homes in construction, appearance, shape and size, zoning regulations can apply reasonable restrictions on manufactured homes to address the potential concerns. **Again, the key is to ensure that a reasonable percentage of zoned residential area within the community is available for placement of manufactured housing.**

F. YARD REQUIREMENTS

Every lot shall have the following yard requirements as measured from the farthest extension of the structure:

1. Front Yard -- A 25-foot yard shall be provided on all street frontages (as measured from the curbline, drainage swale or equivalent drainage facility).

Corner lots shall be construed as having two frontages, each of which shall allow a 25-foot yard with the exception of corner lots located on streets with 60-foot rights-of-way, which shall allow for a 20-foot yard or a yard that matches the established building line on that block.

2. Side Yard -- Side yards abutting interior lot lines shall not be less than 10 feet.
3. Rear Yard -- A rear yard of at least 15 feet shall be provided, except where a garage is located within the rear yard, the rear yard may be reduced to 3 feet.

G. SATELLITE DISHES AND RADIO ANTENNAS (TOWERS)

1. Satellite dishes and radio antennas or towers may be placed in the rear yard.
2. In the event that a usable signal cannot be obtained from the rear yard, the dish, antenna or tower may be located on the side or front, provided that no dish, antenna or tower may be placed in a required front or side yard.

H. LOT AREA AND WIDTH

Except for existing lots of record which, because of ownership, cannot be reassembled to conform to this requirement, the following lot areas and widths are required:

1. Single-family dwelling -- Each lot shall contain a minimum of 7,000 square feet, and be at least 50 feet wide.
2. Multiple-family dwellings -- Each lot shall contain a minimum of 4,000 square feet per dwelling unit, and be at least 50 feet wide.

I. BUILDING HEIGHT

Maximum building height shall be 30 feet for single family dwellings and 40 feet for multiple family dwellings consisting of more than two units.

J. OFF-STREET PARKING

1. Single-family dwellings -- 2 off-street parking spaces required per dwelling unit.
2. Multiple-family dwellings -- 1 1/2 off-street parking spaces required per dwelling unit.
3. Numbers of non-residential parking spaces and all off-street parking requirements shall comply with Section 22 of these regulations.

K. SIGNS

The following signs are permitted in this district:

1. For residential uses, non-illuminated signs less than 8 square feet in area.
2. For all other uses, non-illuminated signs, churches, not exceeding 16 square feet in area, provided the sign is located at least 10 feet from any street right-of-way.

SECTION 31. CENTRAL BUSINESS DISTRICT (CBD)

A. PURPOSE

The Central Business District is intended to be the central focus of the City's business, government, service and cultural activities. The uses in this district should be those that are appropriate in a high density, intensively developed commercial center. Appropriate area should be provided for the logical and planned expansion of the present District. The area should be developed as an attractive, functional and convenient commercial environment, and to provide the mix of activities necessary to maintain the downtown character.

B. PERMITTED PRINCIPAL USES

The following uses are permitted within this district:

1. Amusement centers, recreational facilities located in enclosed buildings
2. Apartments, located above the first floor
3. Auditoriums, theaters
4. Building materials and equipment sales
5. Clubs and lodges
6. Financial institutions
7. Funeral homes
8. Government, educational and institutional uses
9. Hotels, motels
10. Medical and dentist offices, clinics and laboratories
11. Museums and art galleries
12. Nursing homes
13. Offices: professional, business, administrative, services
14. Parking areas
15. Police and fire stations
16. Libraries
17. Recreational facilities
18. Restaurants, (but not drive-in eating establishments)
19. Bars, taverns, lounges, night clubs - in accordance with Section 21, J.
20. Retail businesses or services, whose activities primarily are conducted within an enclosed building
21. Sales, service and repair: motor vehicles (including service stations) agricultural implements, equipment and materials
22. Senior citizen centers
23. Other uses commensurate with the above uses and compatible with the purpose of this District

C. ACCESSORY AND TEMPORARY USES

1. Accessory buildings and uses incidental to the principal uses.
2. Temporary buildings or structures used for and during construction or grading.
3. Temporary signs.
4. Temporary use of open land for meetings, circuses and carnivals.
5. Sale of Christmas trees, baked goods, clothing or like products where no permanent structure is erected.

D. LOT AREA AND WIDTH

1. Where public water and sewer service is available, no minimum lot size is required.
2. Where Montana Department of Health and Environmental Sciences approval of water or sewer facilities is required, that agency shall determine the lot size.

The central business district is the one area in a municipality where compact, high density development is allowed, even encouraged. By not prescribing minimum lot area or width, businesses have incentive to continue the compact development pattern, and they have the flexibility to build structures and design sites that suit their needs. Requirements such as restricting height of buildings and ensuring off-street parking spaces, loading areas, and front and rear yards prevent haphazard and congested development.

E. BUILDING HEIGHT

Maximum building height shall be 45 feet.

This Model uses a maximum height limitation of 45 feet for the commercial districts. This limitation is appropriate for most communities in Montana. However, local officials may want to increase the height limit, allow buildings higher than the limit by variance or conditional use permit, or even impose no height limit. In setting a height limit, if any, local officials should consider such factors as the existing character of their community and buildings, what they want in the future, and the benefits of taller buildings in conserving land area.

F. YARD REQUIREMENTS

1. Front Yard – Any building or structure must be set back at least 8 feet from the curb or street pavement.
2. Side Yard -- No side yards are required.
3. Rear Yard – Any building or structure must be at least 10 feet from the rear property line.

G. OFF-STREET PARKING; OFF STREET LOADING

1. Off-street parking requirements of Section 22 must be met.
2. Off-street loading requirements of Section 23 must be met.

H. SIGNS

All signs must comply with requirements of Section 24.

SECTION 32. HIGHWAY COMMERCIAL DISTRICT (H-C)

A. PURPOSE

This district is intended to accommodate the business and light industrial uses which require more space than is normally available in the Central Business District, or whose operations require access to the major transportation facilities serving the community. The district should accommodate these uses while preserving the traffic carrying capacity of the road system, and the desirability of abutting land for residential development.

B. PERMITTED PRINCIPAL USES

The following uses are permitted within this district:

1. Amusement centers and recreational facilities located in enclosed buildings
2. All uses pertaining to automobile and truck sales, service and repair, including service stations and car washes
3. Beverage bottling and distributing
4. Building equipment and materials -- wholesale and retail, including storage yards
5. Laundry and dry cleaning establishments
6. Electric equipment -- assembly, repair and sales
7. Fraternal lodges, clubs
8. Laboratories
9. Meeting halls, auditoriums, arenas, indoor theaters
10. Motels, hotels, convention centers
11. Outdoor advertising
12. Police or fire stations
13. Retail and wholesale sales, service and repair -- agricultural products, products serving agriculture, farm implements, heavy machinery, mobile homes, travel trailers, recreational vehicles
14. Restaurants and drive-in eating establishments
15. Bars, taverns, lounges, night clubs - in accordance with Section 21, J
16. Storage yards
17. Utilities, public or private
18. Veterinary office, clinic, hospital
19. Wholesale storage or sales
20. Warehouses
21. Other uses commensurate with the above uses and compatible with the purpose of this District

C. CONDITIONAL USES

The following uses must comply with the additional conditions specified below. Approval of these conditional uses must be obtained from the Zoning Commission under the provisions of Section 11, Conditional Use Permits.

USES

CONDITIONS

Recreational Vehicle Park

1. Streets shall be at least 10 feet wide, and wider if necessary to accommodate the expected traffic.
2. Streets and R-V lots shall be designed to permit safe placement and removal of trailers and vehicles.
3. All parks shall provide for safe and convenient access from public roads or streets.
4. The park shall be equipped at all times with fire control equipment in good working order, and be of a type prescribed by local fire authority.
5. Gas and electric utilities shall be installed in accordance with the appropriate codes.
6. R-V vehicles shall be separated from each other and from other structures by at least 15 feet.
7. All R-V spaces shall be located at least 25 feet from a public street or highway right-of-way.
8. The density shall not exceed 25 R-V spaces per acre.

Shopping Center

1. Conditions as specified by the Zoning Commission pursuant to Section 11, B, 3.

D. ACCESSORY AND TEMPORARY USES

1. Accessory buildings and uses incidental to the principal uses.
2. Temporary buildings or structures used for and during construction or grading.
3. Temporary signs.
4. Temporary use of open land for meetings, circuses, carnivals.
5. Sale of Christmas trees, baked goods, clothing or like products where no permanent structure is erected.

E. LOT AREA

1. Where public water and sewer service is available, no minimum lot size is required.
2. Where Montana Department of Health and Environmental Sciences approval is required, that agency shall determine the lot size.
3. Where neither of the above conditions apply, the minimum lot size shall be one acre.

F. HEIGHT REQUIREMENTS

No building or structure may exceed 45 feet in height.

G. YARD REQUIREMENTS

1. Front Yard -- a front yard of at least 30 feet shall be provided on all road frontages.
2. Side Yard -- side yards abutting interior lot lines shall be at least 10 feet.
3. Rear Yard -- a rear yard of at least 10 feet shall be provided.

H. OFF STREET PARKING; OFF STREET LOADING

1. Off street parking facilities must comply with the provisions of Section 22.
2. Off street loading areas must comply with the provisions of Section 23.

I. SIGNS

Signs within this district shall comply with the provisions of Section 24.

J. ACCESS ONTO PUBLIC ROADS

1. Approaches onto public roads and highways shall be at least 32 feet wide.
2. Approaches onto public roads and highways shall have a grade of 6 percent or less.
3. Approaches onto public roads or highways shall be at least 125 feet apart. The centerline of approaches from properties on opposite sides of a public road shall be aligned at the same point on the public road.

K. GRADING AND DRAINAGE

1. The site shall be graded and appropriate drainage facilities installed to remove surface run-off waters in a manner that will not affect adjacent or nearby properties, rivers or public roads.
2. Culverts, curbs, gutters, ditches, swales and other drainage facilities shall be installed to assure that approaches, parking areas and other traffic facilities do not obstruct drainage facilities or adversely affect public road and traffic facilities.
3. Culverts and bridges shall be large enough to accommodate potential run-off from upstream drainage areas.
4. Curbs and gutters or swales shall be required according to the character of the area, density of development, and nature of adjoining properties and public streets.

L. SCREENING AND BUFFERING

Where a non-residential use in this district abuts a residential use of district, the screening and buffering provisions of Section 25 must be met.

M. FENCING

The following uses must be protected by a fence not less than 6 feet in height: (1) outdoor storage of materials or equipment, (2) above ground storage of flammable liquids, gases, or other material, and (3) electrical substations, gas regulator stations and microwave reflectors.

N. LIGHTING

Lighting must be shielded to avoid casting direct light on adjacent residential uses or institutional uses providing human care.

SECTION 33. GENERAL COMMERCIAL DISTRICT (GC)

A. PURPOSE

This district is intended to accommodate general business uses while preserving the traffic capacity of the street system and the desirability of adjacent residential development. The area should be developed as an attractive, functional and convenient commercial development.

B. PERMITTED PRINCIPAL USES

The following uses are permitted within this district:

1. Amusement centers, recreational facilities located in enclosed buildings
2. Auditoriums, theaters
3. Building materials and equipment sales
4. Beverage bottling and distributing
5. Clubs and lodges
6. Financial institutions
7. Funeral homes
8. Government, educational and institutional uses
9. Hotels, motels
10. Medical and dentist offices, clinics and laboratories
11. Museums and art galleries
12. Nursing homes
13. Offices: professional, business, administrative, government and services
14. Parking areas
15. Police and fire stations
16. Libraries
17. Recreational facilities
18. Restaurants, drive-in eating establishments
19. Bars, taverns, lounges, night clubs - in accordance with Section 21, J
19. Retail businesses or services,
20. Sales, service and repair: motor vehicles (including service stations) agricultural implements, equipment and materials
21. Senior citizen centers
22. Other uses commensurate with the above uses and compatible with the purpose of this District

C. CONDITIONAL USES

The following uses must comply with the additional conditions specified below. Approval of these conditional uses must be obtained from the Zoning Commission under the provisions of Section 11, Conditional Use Permits.

USES

CONDITIONS

Shopping Center

1. Conditions as specified by the Zoning Commission pursuant to Section 11, B, 3.

D. ACCESSORY AND TEMPORARY USES

1. Accessory buildings and uses incidental to the principal uses.
2. Temporary buildings or structures used for and during construction or grading.
3. Temporary signs.
4. Temporary use of open land for meetings, circuses, carnivals.
5. Sale of Christmas trees, baked goods, clothing or like products where no permanent structure is erected.

E. LOT AREA

1. Where public water and sewer service is available, no minimum lot size is required.
2. Where Montana Department of Health and Environmental Sciences approval is required, that agency shall determine the lot size.
3. Where neither of the above conditions apply, the minimum lot size shall be one acre.

F. HEIGHT REQUIREMENTS

No building or structure may exceed 45 feet in height.

G. YARD REQUIREMENTS

1. Front Yard -- a front yard of at least 20 feet shall be on all road frontages.
2. Side Yard -- side yards abutting interior lot lines shall be at least 10 feet.
3. Rear Yard -- a rear yard of at least 10 feet shall be provided.

H. OFF-STREET PARKING; OFF-STREET LOADING

1. Off street parking facilities must comply with the provisions of Section 22.
2. Off street loading areas must comply with the provisions of Section 23.

I. SIGNS

Signs within this district shall comply with the provisions of Section 24.

J. ACCESS ONTO PUBLIC ROADS

1. Approaches onto public roads and highways shall be at least 24 feet wide.
2. Approaches onto public roads and highways shall have a grade of 6 percent or less.
3. Approaches onto public roads or highways shall be at least 125 feet apart. The centerline of approaches from properties on opposite sides of a public road shall be aligned at the same point on the public road.

K. GRADING AND DRAINAGE

1. The site shall be graded and appropriate drainage facilities installed to remove surface run-off waters in a manner that will not affect adjacent or nearby properties, rivers or public roads.
2. Culverts, curbs, gutters, ditches, swales and other drainage facilities shall be installed to assure that approaches, parking areas and other traffic facilities do not obstruct drainage facilities or adversely affect public road and traffic facilities.
3. Culverts and bridges shall be large enough to accommodate potential run-off from upstream drainage areas.
4. Curbs and gutters or swales shall be required according to the character of the area, density of development, and nature of adjoining properties and public streets.

L. SCREENING AND BUFFERING

Where a non-residential use in this district abuts a residential use or district, the screening and buffering provisions of Section 25 must be met.

M. FENCING

The following uses must be protected by a fence not less than 6 feet in height: (1) outdoor storage of materials or equipment, (2) above ground storage of flammable liquids, gases, or other material, and (3) electrical substations, gas regulator stations and microwave reflectors.

N. LIGHTING

Lighting must be shielded to avoid casting direct light on adjacent residential uses or institutional uses providing human care.

SECTION 34. GENERAL INDUSTRIAL DISTRICT (I)

A. PURPOSE

This district is intended to provide for efficient and functional operation of heavy fixed equipment or machinery, manufacturing, processing, and other industrial uses in appropriate locations. Industrial uses which produce noise, smoke, dirt, vibration, glare or similarly obtrusive nuisances shall be regulated to minimize the impact on the public health and safety. These activities generally require reasonable access to major transportation facilities, need extensive open storage and service areas and generate heavy traffic. To help ensure efficiency and function of industrial uses, protection from incompatible residential and commercial uses is necessary.

B. PERMITTED USES

1. All uses associated with operations of railroads
2. Automobile, truck, farm machinery, heavy equipment repair
3. Agricultural products processing, storage, loading; grain elevators
4. Cement, concrete and paving products, including mixing plants
5. Freight terminals -- truck or rail
6. Industrial laboratories
7. Manufacturing or processing:
 - (a) products from organic material, chemicals, glass, metal, minerals, stones or earth
 - (b) foodstuffs, textiles, electrical components, wood, leather, paper, or plastic
8. Fabrication or assembly of products from pre-structured materials or compounds
9. Signs -- billboards
10. Storage yards
11. Utilities
12. Welding or sheet metal shops
13. Warehousing

C. CONDITIONAL USES

The following uses must comply with the additional conditions specified below. Approval of these conditional uses must be obtained from the Zoning Commission under the provisions of Section 11, Conditional Use Permits.

USES

CONDITIONS

- | | |
|-----------------------------------|--|
| 1. Meat packing, rendering plants | 1. Any building or structure used to retain animals or process animal products must be at least 300 feet from a residential district or institutional use. |
|-----------------------------------|--|

- | | | |
|---|----|---|
| | 2. | A solid fence at least 8 feet high must enclose the use, or a screen of evergreen shrubs or trees at least 8 feet high at maturity must be planted. The fence or screen must be maintained. |
| 2. Auto wrecking, scrap, salvage yards | 1. | A solid fence at least 8 feet high must enclose the use, or a screen of evergreen shrubs or trees at least 8 feet high at maturity must be planted. The fence or screen must be maintained. |
| 3. Bulk storage of flammable liquids or gases or other hazardous materials above ground | 1. | All uses set back at least 300 feet from all lot lines. |
| | 2. | All uses shall conform with the provisions set forth in the _____ Municipal Code, entitled "Petroleum Storage Tanks." |

D. ACCESSORY AND TEMPORARY USES PERMITTED

1. Accommodations for caretakers, watchmen and custodians.
2. Outdoor storage of merchandise or inventory.
3. Temporary buildings of other structures for and during construction or grading
4. Use of open land for meetings, circuses or carnivals.
5. Sale of Christmas trees, baked goods, clothes or like products where no permanent structure is erected.

E. LOT AREA

1. Where public water and sewer service is available, no minimum lot size is required.
2. Where Montana Department of Health and Environmental Sciences approval is required, that agency shall determine the lot size.
3. Where neither of the above conditions apply, the minimum lot size shall be one acre.

F. YARD REQUIREMENTS

1. Front yard -- a 50-foot front yard must be provided along any street frontage.
2. Side Yard -- side yards abutting interior lot lines must be at least 25 feet.
3. Rear Yard -- rear yards must be at least 20 feet.

G. HEIGHT REQUIREMENT

There is no maximum height limitation.

H. OFF-STREET PARKING; OFF-STREET LOADING

1. Off-street parking facilities must comply with the provisions of Section 22.
2. Off-street loading areas must comply with provisions of Section 23.

I. SIGNS

All signs shall conform to the provisions prescribed in Section 24.

J. ACCESS ONTO PUBLIC ROADS

1. Approaches onto public roads and highways shall be at least 32 feet wide.
2. Approaches onto public roads and highways shall have a grade of 6 percent or less.
3. Approaches onto public roads or highways shall be at least 125 feet apart. Centerline of approaches from properties on opposite sides of a public road shall be aligned at the same point on the public road.

K. GRADING AND DRAINAGE

1. The site shall be graded and appropriate drainage facilities installed to remove surface run-off waters in a manner that will not affect adjacent or nearby properties, rivers or public roads.
2. Culverts, curbs, gutters, ditches, swales and other drainage facilities shall be installed to assure that approaches, parking areas and other traffic facilities do not obstruct drainage facilities or adversely affect public road and traffic facilities.
3. Culverts and bridges shall be large enough to accommodate potential run-off from upstream drainage areas.
4. Curbs and gutters or swales shall be required according to the character of the area, density of development, and nature of adjoining properties and public streets.

L. SCREENING AND BUFFERING

Where a non-residential use in this district abuts a residential use of district, the screening and buffering provisions of Section 25 must be met.

M. FENCING

The following uses must be protected by a fence not less than 6 feet in height: (1) outdoor storage of materials or equipment, (2) above ground storage of flammable liquids, gases, or other material, and (3) electrical substations, gas regulator stations and microwave reflectors.

N. LIGHTING

Lighting must be shielded to avoid casting direct light on adjacent residential uses or institutional uses providing human care.

PASSED unanimously by the City Council of _____, Montana, on the _____ day of _____, 19____, and APPROVED by the Mayor on the _____ day of _____, 19____.

Mayor

ATTEST:

Clerk/Treasurer

APPENDIX A

HISTORIC PRESERVATION AND ARCHITECTURAL DESIGN REVIEW

Many communities wish to preserve the historic heritage represented by older neighborhoods or core areas by both saving older and historic buildings, and ensuring that improvements and new structures are designed to harmonize with the historic character of the area. Some communities are interested in setting architectural design requirements for development other than in historic districts. In commercial areas, for example, new development can be required to include landscaping, or to use design features to avoid the "box look" of more typical commercial structures.

Ensuring that new construction or alteration of existing structures will be in harmony with the historic character or architectural design of the area is accomplished by requiring that development proposals be submitted to a design review board. The design review board should comprise qualified persons such as builders, planners and licensed architects, as well as citizens and perhaps representatives of the city council.

A separate zoning district, such as a historic preservation district, can be created as another of the list of residential, commercial and industrial districts. The district would have its own set of development requirements that could include criteria or guidelines for architectural and historic design. As an alternative, an "overlay" district could be formed, which would prescribe requirements in addition to those specified in the standard, or underlying zoning district. The overlay district, such as a historic preservation overlay district, could also allow the design review board to waive or modify appropriate requirements of the underlying district.

A number of alternatives review procedures can function effectively. The design review board can advise the zoning commission or city council as part of a conditional use permitting process, or the board can be delegated actual permitting authority. A proposed development in the historic or design review district could be required to receive approval of both the design review board and the zoning commission or city council.

The design review process presented below is one approach. It deals with historic preservation, but a municipality could use it for other architectural design review purposes. The process below establishes a historic preservation overlay district (HPOD). All proposed new construction or alteration of existing structures or sites within the HPOD must obtain a conditional use permit from the Zoning Commission under Section 11, Conditional Use Permits of this Model. A design review board is created as an advisory body to the Zoning Commission, but is given a major role in public hearings and in shaping the conditions for the conditional use permit in each individual application. The Zoning Commission is empowered by this overlay district to waive or modify appropriate zoning requirements of the underlying zoning district. Guidelines and criteria are adopted to guide the design review board and Zoning Commission in requiring design features or in modifying underlying zoning requirements.

Enforcing design review requirements goes beyond the normal concerns typically addressed in a zoning Ordinance. Local officials proposing design or historic review should draft a clear statement of purpose and intent of such requirements, and have thoroughly examined the community to document the need and rationale for adopting design review requirements. The comprehensive plan also should reflect the community's desire to preserve the historic character of the district.

The following language could be added to the Model to provide one approach to design review:

SECTION 35. HISTORIC PRESERVATION OVERLAY DISTRICT

A. Purpose

The purpose and intent of this district is to stimulate the restoration and rehabilitation of structures and property that contribute to the character and fabric of established residential, commercial or industrial neighborhoods. New construction will be encouraged provided the primary emphasis is on preservation of existing buildings and that the design of new development furthers the aesthetic character and function of the property and area.

Because most of the development within the district occurred prior to adoption of zoning and other regulations, the land use and design is highly diverse and often does not conform to conventional regulations. This section recognizes that this diversity is a major contributing factor of the district's historic character. This section may be applied to encourage the protection and enhancement of the existing historic and diverse features.

B. Historic Preservation Overlay District Established

1. After thorough study and inventory, the City Council may designate a geographical area within the municipality having significant historical value and character as a Historic Preservation Overlay District (HPOD).
2. The boundaries of the HPOD may overlap (i.e., overlay) the boundaries of other districts established under this Ordinance.
3. A proposed development must conform to the requirements of both this overlay district and the underlying district, except that through the procedures of this overlay district a portion of the requirements of the underlying district may be waived or modified.

4. All new development within this district shall be reviewed and acted upon by the Zoning Commission under the procedures of Section 11, Conditional Use Permits.

C. Design Review Board; Powers

1. The City Council shall form and appoint a Design Review Board.
2. The Design Review Board will comprise 7 local members as follows:
 - a. 2 licensed professional architects
 - b. 1 building contractor
 - c. the Zoning Administrator
 - d. 1 member of the city council
 - e. 2 citizens
3. The Design Review Board shall have the following powers and responsibilities:
 - a. review applications for development within this historic preservation overlay district.
 - b. recommend to the Zoning Commission appropriate modifications of requirements of the underlying zoning district, and recommendations for approval, conditions for conditional approval, or denial of an application for development within the HPOD.
 - c. develop and apply specific guidelines related to architectural appearance, landscape design and signing for the construction or alteration of structures or sites within the HPOD.
 - d. call upon city staff for advice or assistance.
 - e. testify before boards or the City Council on matters relating to architecturally significant sites, structures, areas or neighborhoods.

D. Procedures for Review and Action

1. A person proposing development within the HPOD must submit an application for a conditional use to the Zoning Administrator. The application must present the information specified in Section 11, Conditional Use Permits, and sketches of proposed new construction or alterations to existing structures.
2. The Zoning Administrator will forward copies of the application to the members of the Design Review Board and the Zoning Commission.
3. The Design Review Board will review the application and meet with the applicant.
4. The Design Review Board will submit recommendations to the Zoning Commission.
5. The Zoning Commission and the Design Review Board will publish notice and hold a joint public hearing to discuss the application. At the hearing the Zoning Administrator and the developer will be invited to explain the proposed project, the Design Review Board will discuss its recommendations, and the members of the

general public will be invited to comment.

6. The Zoning Commission, considering the recommendations of the Zoning Administrator, Design Review Board and public comment, will approve, conditionally approve or deny the application under the procedures specified in Section 11, Conditional Use Permits. The Zoning Commission will present in writing the conditions for conditional approval or the reasons for denial.

E. Standards of Historic Preservation Review

The Design Review Board and the Zoning Commission will be guided by the following in considering appropriate design and modifying requirements of the underlying zoning districts:

1. Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings, published by the U.S. Department of Interior, National Park Service, Preservation Assistance Division (available for review at the office of the Zoning Administrator).
2. Architectural design guidelines used to consider the appropriateness and compatibility of proposed development with existing properties shall focus on:
 - a. height
 - b. proportions of doors and windows
 - c. relationship of building masses and spaces
 - d. roof shape
 - e. scale
 - f. dominant horizontal or vertical expression of surrounding structures
 - g. architectural details
3. The criteria for granting deviations from the underlying zoning district requirements include:
 - a. modifications shall be consistent with the intent and purpose of this section, the zoning Ordinance and adopted comprehensive plan.
 - b. modifications shall have minimal adverse impact on abutting properties or allowed uses.
 - c. modifications shall ensure the protection of the public health, safety and general welfare.
 - d. Approvals may be conditioned to include:
 - 1) a time period for completion of alterations
 - 2) landscaping and its maintenance
 - 3) location, surfacing and marking of off-street parking areas
 - 4) other conditions in conformity with the intent and purpose of this section

APPENDIX B

SUGGESTIONS FOR ADDRESSING THE "LOWE" 12 POINT TEST

The Montana Supreme Court, in *Lowe v. City of Missoula*, 165 Mont. 38, 525 P. 2nd 551 (1974), ruled that a municipality, in proposing a zoning Ordinance or amendments to an Ordinance, must consider whether the zoning or amendments meet the 12 points set forth in the purpose section (76-2-304, MCA) of the Municipal Zoning Enabling Act.

The following are suggestions that local officials can include in a report to demonstrate that a zoning proposal will meet the "Lowe" 12-point test. For zone changes, many of these suggestions can be modified to address a specific property or area(s) of the city or a specific provision(s) of the Ordinance that may be the subject of the zone change. The report that addresses the 12 points should be made a part of the record of proceedings for the proposed zoning or rezoning.

1. Is the proposed zoning designed in accordance with the comprehensive plan?

The report can refer to the land use plan map of the comprehensive plan to show that the various zoning districts conform to the map. Also, any statements in the comprehensive plan setting forth land use policy that would be implemented by the zoning Ordinance should be cited.

2. Is the proposed zoning designed to lessen congestion in the streets?

- A. Traffic congestion is lessened by off-street parking requirements, density limitations that reduce traffic volumes, front yard set backs that help separate structures and activities from traffic and allow increased visibility for motorists.
- B. General congestion is reduced by minimum lot requirements that limit densities, set backs that prevent crowdedness, districts that separate incompatible uses, and sign regulations that lessen congested signing patterns.

3. Will the proposed zoning promote health and general welfare?

- A. Required set backs help prevent spread of fire and promote light and air; grading and drainage requirements help ensure proper removal of storm water run-off; off-street parking and loading regulations provide safer, more convenient access to businesses and reduce traffic hazards on streets; height requirements promote light and air; and reasonable regulations on home occupations prevent problems from traffic, noise, smoke, dust and bright light while allowing families to derive economic benefits.

- B. Districts separate or reduce incompatibilities among certain uses.
- C. A conditional use review process provides greater scrutiny of large or complex uses that can have significant community impacts.
- D. A planned unit development process allows flexibility so developments can be designed to preserve natural features, provide economical public services, preserve agricultural or open land, and provide affordable housing.

4. Will the proposed zoning secure safety from fire, panic and other dangers?

- A. Required height limitations and set backs prevent spread of fire and protect the effectiveness of fire fighting equipment.
- B. Development would be prohibited or properly designed to overcome problems in flood hazard areas or other high hazard areas.

5. Will the proposed zoning provide adequate light and air?

The proposed set back, minimum lot size and width, and height regulations would provide for light and air. Sign regulations would limit height and density of signs so that light and air is assured.

6. Will the proposed zoning prevent the overcrowding of land?

- A. Minimum lot sizes limit densities and ensure adequate separation of structures and activities; set backs, height restrictions and sign regulations alleviate crowdedness; off-street parking requirements lessen crowdedness and congestion of city streets.
- B. The districts direct various uses to areas served by public services and ensure separation among uses.

7. Will the proposed zoning avoid undue concentration of population?

Minimum lot sizes limit population densities; regulations regarding location and density of multi-family and manufactured housing prevents undue concentration of population.

8. Will the proposed zoning facilitate the adequate protection of transportation, water, sewer, schools, parks, police, and other public facilities?

The zoning would implement the comprehensive plan, which was developed by thoughtful consideration for providing the various land uses with adequate public services; provisions that limit densities help keep development within the capacities of public facilities.

9. Does the proposed zoning give particular consideration to the peculiar suitability of the property for particular uses?

- A. The zoning Ordinance would implement the comprehensive plan, through which the community identified suitable sites for various uses.
- B. The permitted and conditional uses for each district were determined by considering the suitability of the properties in each district for the uses.

10. Does the proposed zoning give reasonable consideration to the character of the district?

The zoning would implement the comprehensive plan, through which local officials considered the character of each district and determined the appropriate permitted and conditional uses for each district.

11. Will the proposed zoning be adopted with a view to conserving the value of buildings?

- A. The value of buildings and all property will be protected from adjacent incompatible or haphazard development by regulations on minimum lot sizes and widths, height limitations, proper grading and drainage, and off-street parking. Required landscaping will add value to buildings and properties.
- B. Districts segregate incompatible uses, which protects the value of existing buildings and other property.
- C. The use and renovation of existing buildings are protected by nonconforming use provisions.

12. Will the proposed zoning encourage the most appropriate use of land throughout the municipality?

The zoning would implement the comprehensive plan, which was developed in a public process through which the community has identified the most appropriate use of lands throughout the municipality.

1,500 copies of this public document were published at an estimated cost of \$2.00 per copy, for a total cost of \$3,000.00, which includes \$3,000.00 for printing and \$.00 for distribution.

This document printed on recycled paper.